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2
3
4
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6
7
8
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SACRAMENTO

SECURUS TECHNOLOGIES, LLC,

Petitioner,

v.

CALIFORNIA DEPARTMENT OF
TECHNOLOGY, CALIFORNIA
DEPARTMENT OF CORRECTIONS AND
REHABILITATION, and DOES 1 through
100, inclusive,

Respondents,

GLOBAL TEL*LINK CORPORATION, a
Delaware Corporation,

Real Party In Interest.

Case No. 34-2021-80003594-CU-WM-GDS

[Assigned to the Honorable James P.
Arguelles, Dept. 17]

**OPENING BRIEF OF PETITIONER
SECURUS TECHNOLOGIES, LLC**

Date: September 10, 2021
Time: 9:00 a.m.
Dept.: 17

*[filed concurrently with Declaration Joshua
Conklin; Declaration of William Wickard;
and [Proposed] Order]*

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. INTRODUCTION 1

II. FACTUAL BACKGROUND 2

 A. The State Issues the RFP for a New Communications Technology Solution for CDCR..... 2

 B. The State Conducts Negotiations with Securus and GTL..... 5

 C. The State Awards a New Contract to GTL 7

III. ARGUMENT 8

 A. Judicial Standard for Issuance of Writ of Mandate..... 8

 B. The State Failed to Properly Analyze Cost 10

 1. CDT Failed to Disqualify GTL for Exceeding the RFP’s \$0.05 per Minute NTE 10

 2. CDT Granted GTL an Unfair Competitive Advantage Over Over Securus in Improperly Evaluated Cost..... 11

 C. CDT Failed to Properly Analyze References..... 12

 1. CDT Failed to Disqualify GTL for Submitting False and Misleading References 12

 2. The State Improperly Scored References and Minimum Qualifications 14

 D. The State has a Clear Public Duty to Award the Contract in Accordance with the RFP and California Law..... 15

V. CONCLUSION 16

TABLE OF AUTHORITIES

Cases

Baldwin-Lima-Hamilton Corp. v. Superior Court,
208 Cal. App. 2d 803 (1962)..... 8

Eel River Disposal & Res. Recovery, Inc. v. Humboldt,
221 Cal. App. 4th 209 (2013)..... *passim*

Great West Contractors, Inc. v. Irvine Unified Sch. Dist.,
187 Cal. App.4th 1425 (2010)..... 9

Madera Cmty. Hosp. v. County of Madera,
155 Cal. App. 3d 136 (1984)..... 15

Marshall v. Pasadena Unified Sch. Dist.,
119 Cal. App. 4th 1241 (2004)..... 15, 16

MCM Constr. v. City and County of San Francisco,
66 Cal. App. 4th 359 (1998)..... 9

Michaelis, Montanari & Johnson v. Superior Court,
38 Cal. 4th 1065 (2006) 8

Miller v. McKinnon,
20 Cal. 2d 83 (1942) 15

Monterey Mechanical Co. v. Sacramental Regional County Sanitation Dist.,
44 Cal. App. 4th 1391 (1996)..... 9, 10

Pozar v. Department of Trans.,
145 Cal. App. 3d 269 (1983)..... 9

Schram Constr., Inc. v. Regents of the University of Calif.,
187 Cal. App. 4th 1040 (2010)..... 8

West Coast Air Conditioning Co. Inc. v. CDCR,
21 Cal. App. 5th 453 (2018)..... 15

Statutes

Cal. Pub. Contract Code § 6611(d) 9

1 **I. INTRODUCTION**

2 California Department of Technology (“CDT” or “State”) violated California law in
3 awarding a contract pursuant to RFP CDCR08112020 for Communications and Technology
4 Solution (“RFP”) to Global Tel*Link Corporation (“GTL”) to provide communication technology
5 (including incarcerated individual voice calling, incarcerated individual video calling and
6 incarcerated individual tablets) for the California Department of Corrections and Rehabilitation
7 (“CDCR”). CDT failed to disqualify GTL for not complying with the RFP’s not-to-exceed cap on
8 calling rates of \$0.05 per minute for *all calling types* (“NTE”). Instead, GTL proposed charging a
9 per minute video calling rate of \$0.25, which is 500% over the NTE, and a per minute international
10 voice calling rate of \$0.07, which is 40% over the NTE. CDT should have disqualified GTL and
11 awarded the Contract¹ to Securus, which was the highest scoring responsive and responsible bidder.
12 As a result, incarcerated individuals and their friends and families will be paying *over \$11,000,000*
13 *more per year* or *\$110,000,000 more over the potential ten-year life of the contract for video*
14 *calling than they would have under Securus.*

15 As shown below, the State has violated its public duties to award the contract in accordance
16 with California law as the award to GTL violates California law in multiple ways. In particular:

- 17 • **CDT Failed to Disqualify GTL For Violating the Cap on Calling Rates.** The RFP contains
18 an NTE cap on calling rates of \$0.05 per minute for *all calling types*. GTL proposed charging
19 a video calling rate of \$0.25 per minute and international voice calling rate of \$0.07 per minute.
20 These rates violate the RFP and required that CDT disqualify GTL and reject its proposal. Yet,
21 CDT failed to disqualify GTL and actually awarded it the Contract.
- 22 • **CDT Granted GTL an Unfair Competitive Advantage.** CDT permitted GTL to charge video
23 calling rates and international calling rates that exceeded the NTE. This was an unfair
24 advantage that no other offeror received. Without the burden of having to comply with the
25 NTE for video calls and the anticipated increase in video calling utilization that will follow
26 once the State implements video calling full time, GTL was able to reduce its other telephone

27 _____
28 ¹ “Contract” refers to the CDT Standard Agreement number C5610009 between CDCR and
GT. See Conklin Decl. at Ex. 11.

1 calling rates and received the maximum amount of cost points available. Had the State provided
2 Securus with the same opportunity, Securus could have re-structured its cost offer, charge lower
3 voice calling rates and higher video calling rates, and potentially receive more cost points than
4 GTL.

- 5 • **CDT Failed to Disqualify GTL For Not Providing Requested References.** CDT failed to
6 disqualify GTL for its inability to satisfy the RFP’s requirement for references of past
7 performance with a project of similar complexity as this project. In fact, CDT performed no
8 reference checks whatsoever and did not verify anything GTL submitted on references. Had it
9 done so, it would have learned GTL’s references were not for projects of similar complexity.
- 10 • **CDT Calculated Reference Scores Arbitrarily.** CDT arbitrarily scored GTL in references
11 by, among other things, awarding GTL incremental points for having 3 products in 3 other
12 jurisdictions for 5 years when in fact GTL admitted under questioning from the State that they
13 were merely “in the process of installing” at some of those jurisdictions.

14 For any one these reasons, the Contract is void and of no effect. As such, this Court should
15 issue a writ of mandate and: (i) enjoin CDT’s award and execution of the Contract with GTL; (ii)
16 declare the Contract illegal and void; and (iii) require CDT to disqualify GTL and award the
17 Contract to Securus. Alternatively, Securus requests that the Court require the State to conduct a
18 re-bid in accordance with California law.

19 **II. FACTUAL BACKGROUND**

20 **A. The State Issues the RFP for a New Communications Technology Solution for**
21 **CDCR.**

22 On August 11, 2020, CDT issued the RFP followed by two addendums on September 25,
23 2020 and October 13, 2020 (references to RFP include the addendums). Declaration of Josh
24 Conklin (“Conklin Decl.”) at Ex. 1. The RFP solicited bids to provide a CTS for CDCR that would
25 include three major products per the statement of work provided by the State: (1) incarcerated
26 individual voice calling; (2) incarcerated individual video calling; and (3) incarcerated individual
27 tablets. *Id.*, Ex. 1, RFP Pts. 1 and 2 Addend. 2 at pp. 13-14 of 230.

1 One of the goals of the RFP was to provide “enhanced incarcerated individual
2 communications, provide electronic access to new services and increase access to existing services
3 for incarcerated individuals through advancements in technology to increase rehabilitative
4 opportunities.” *Id.*, Ex. 1, RFP Pts. 1 and 2 Addend. 2 at §1.1, p. 13 of 230. The RFP listed as one
5 of its “communications business objectives” to “[p]rovide communications services consisting of
6 voice, email, e-letters, and video calling to communicate with family, friends, and other authorized
7 individuals.” *Id.*, Ex. 1, RFP Pts. 1 and 2 Addend. 2 at §1.4.4.1, p. 31 of 230.

8 In this regard, the RFP provided that the successful bidder was to implement both traditional
9 voice calling as well as video calling, which the State does not currently have:

10 In terms of communication services, the most significant change is the
11 implementation of live video calling and electronic messaging. In the proposed
12 environment, Incarcerated individuals will have the ability to schedule and make
13 video calls. This operates much like a correctional-grade Skype call that is
14 monitored and recorded.

15 *Id.*, Ex. 1, RFP Pts. 1 and 2 Addend. 2 at §1.4.4.1, p. 30 of 230.

16 The Contract awarded pursuant to the RFP would be a revenue generating concession
17 contract as the State does not incur any cost and is not obligated to pay the contractor for any
18 products or services. *Id.*, Ex. 1, RFP Pts. 1 and 2 Addend. 2 at §5.2, p. 92 of 230. Instead, the
19 contractor would be responsible for all costs associated with implementation and installation of
20 equipment and services and must pay the State an annual Contract Administrative Fee of \$200,000.
21 *Id.*, Ex. 7, Evaluation and Selection Report at 6-7. In exchange, the winning bidder would receive
22 the right to operate and collect revenues by charging for completed calls originating from CDCR.

23 Another goal of the RFP was to obtain the lowest pricing possible:

24 *The intent is to structure the pricing format in order to facilitate a straightforward
25 comparison among all Bidders and foster competition to obtain the best market
26 pricing to ensure the lowest possible rates, fees, and product cost for Incarcerated
27 individuals, family, and friends. Since no commissions are paid to the State, the
28 pricing for CTS services are expected to be lower than other State [Department of
29 Corrections] and shall not exceed the current rates/pricing for these services.*

30 *Id.*, Ex. 1, RFP Pts. 1 and 2 Addend. 2 at §5, pp. 90-91 of 230 (emphasis added).

31 In this regard, the RFP made clear that the bidder’s rates **for all calls including video and
32 voice calls** could not exceed a \$0.05 per minute Not to Exceed (“NTE”) cap:

1 Cost is a primary evaluation criterion weighted at 30% of the total 2,000 points.
2 Evaluation in this category will be based on the lowest total estimated net cost as
3 calculated according to the methodology in this section and Section 7, Evaluation.

4 **The State has established not-to-exceed (NTE) rates for this procurement.**
5 **Bidder's rates for calls must not exceed \$.05 per minute. Bidders may propose**
6 **rates lower than the NTE identified.**

7 All proposed costs for *all* line items must be all inclusive, thereby including the cost
8 of *any and all* services required in this solicitation.

9 *Id.* (emphasis in original).

10 In other words, the State was establishing an NTE of \$0.05 per minute for calling services
11 with the intent of “obtaining the best market pricing to ensure the lowest possible rates, fees, and
12 product cost for Incarcerated individuals, family, and friends.” *Id.* The RFP made clear that a
13 bidder that submitted rates that failed to comply with the NTE rates **should be disqualified**. *See*
14 *id.*, Ex. 1, RFP Pts. 1 and 2 Addend. 2 at Attach. 2: Solicitation Submission Checklist p. 222 of
15 230 (“ Cost Complies with NTE rates.”).

16 The RFP's glossary of terms made clear that “calls” included both voice and video calls:

17 **Call Detail Record (CDR)** - data record produced by the CTS that documents the
18 details of the telephone, *video phone*, VRS, and the ASL-VCS.

19 *****

20 **Outbound Call** – telephone, *video*, VRS, or ASL-VCS calls originating from an
21 incarcerated individual to their family or friends

22 *****

23 **Video Call** – simultaneous real-time audio and video communication between
24 incarcerated individual and their family or friends.

25 *Id.*, Ex. 1, RFP Pts. 1 and 2 Addend. 2 at Attach. 5, pp. 223-24 of 230 (emphasis added).

26 The RFP included a scoring and point allocation methodology with 2,200 total available
27 points (i.e., 2000 maximum scored points + 200 maximum preference points), with over 25% of the
28 points (600) allocated to cost. *Id.*, Ex. 1, RFP Pts. 1 and 2 Addend. 2 at §7.3, p. 99-100, 109 of
230. The bidder with the lowest proposed total cost not exceeding the NTE would receive the
maximum score of 600 points and all other bidders would receive a proportionally lower score
using the ratio of the lowest proposed total cost to the bidder's proposed total cost applied to the
maximum points of 600. *Id.*

1 The Contract has a lengthy term as the winning bidder would be awarded a contract with an
2 initial term of six years with four one-year options to extend for a total 10-year term. *Id.*, Ex. 1,
3 RFP Pts. 1 and 2 Addend. 2 at §1.3, p. 14 of 230.

4 **B. The State Conducts Negotiations with Securus and GTL.**

5 On or around October 28, 2020, three bidders submitted proposals in response to the RFP
6 to the State: GTL, Securus, and IC Solutions, Inc. (“ICS”). *Id.*, Ex. 7, Evaluation and Selection
7 Report at 8.

8 In its proposal, Securus proposed video calling pricing pursuant to the RFP’s form which
9 requested a proposed rate for video calling *per transaction* (i.e., per video call), not per minute.
10 *See id.* at ¶¶7-8 & Ex. 2, Securus Cost Workbook. Securus proposed a \$0.99 rate *per transaction*
11 (i.e., per video call). *Id.* Securus also proposed telephone calling rates of \$0.009 per minute for
12 adult local calls, \$0.00 per minute for youth local calls, and \$0.05 per minute for international calls.
13 *See id.*

14 GTL, on the other hand, proposed calling rates much higher than Securus’ rates - a \$1.25
15 rate per transaction (i.e., per video call), \$0.025 per minute for adult local calls, \$0.00 per minute
16 for you local calls, and \$0.10 per minute for international calls. *See id.* at Ex. 12, GTL cost
17 Workbook.

18 The State then invited GTL and Securus to participate in a negotiation process. The State
19 did not invite ICS to participate in the negotiation process.

20 The State sent Securus an email with an agenda for a negotiation session with the State
21 which stated, “Much of the negotiation will be focused on your cost response.” *Id.*, Ex. 3, 11/25/20
22 email from K. DeAngelis to S. Cadwell with agenda. The State’s agenda made clear that the State
23 wanted a *per minute rate* for each Video Call that complied with the \$0.05 per minute NTE. *See*
24 *id.*, Ex. 3, agenda (“Each Video Call (i.e., Video Visitation) - This is a per minute rate.... If services
25 and features are not available without remaining below the Not to Exceed requirement stated in
26 CTS RFP Parts 1 and 2 Addendum 2, section 5, Cost, Bidder must remove all references of those
27 services and features from their bid submission.”). During Securus’ WebEx negotiation session,
28 with the State on December 1, 2020, the State informed Securus that its proposed video calling rate

1 of \$0.99 was high. *See id.* at ¶12. Securus explained that the \$0.99 video calling rate it had
2 submitted was for a 30-minute video call. *See id.* at ¶13. The State informed Securus that it must
3 submit its video calling rate as a per minute rate that complies with the \$0.05 NTE. *See id.* at ¶14.

4 The State also sent GTL an email with an agenda for a negotiation session that requested
5 GTL reduce its telephone calling rates, its international calling rates, and its video calling rates.
6 *See id.* at ¶36, Ex. 15.

7 At the conclusion of negotiations, the State requested Best and Final Offers (“BAFOs”)
8 from Securus and GTL to clarify and document understandings reached during negotiations. *See*
9 *id.* at ¶15. The State provided Securus with a written request for a BAFO on December 2, 2020
10 which once again made clear that all of the RFP’s requirements “MUST be met and included in the
11 not to exceed (NTE) price.” *See id.* at ¶37; Ex. 16. This request stated that Securus must submit
12 its video calling rate as a per minute rate: “Each Video Call (i.e. Video Visitation) is a per minute
13 rate, average transaction of 15 minutes.” *See id.* The State did not request Securus reduce any of
14 its calling rates (telephone or video) but did request it reduce its rates for an advance pay call
15 transaction fee, movie subscription services, earbuds, keyboards and chargers, new release game
16 options, and new release movie options. *See id.*

17 On the other hand, the State specifically requested GTL reduce all its calling rates for
18 telephone calls, international calls, and video calls. *See id.* at ¶38, Ex. 17

19 On December 9, 2020, Securus and GTL each submitted BAFOs. *See id.* at ¶16 & Ex. 4,
20 Securus BAFO & Ex. 13, GTL BAFO. Securus’ BAFO - in accordance with the direction it
21 received from the State during its negotiation session - replaced and reduced its original video
22 calling rate of \$0.99 per video call with a video calling rate of \$0.039 per minute. *See id.* at ¶17 &
23 Ex. 4, Securus’ BAFO. Securus’ BAFO clarified its new video calling rate as follows: *Video*
24 *Calling rates reduced in amount and **changed in billing type** to \$.039/min.”* *See id.* at ¶18 & Ex.
25 4, Securus BAFO. Securus’ BAFO also provided telephone calling rates of \$0.039 for local and
26 international calls. *See id.*

1 GTL’s BAFO, on the other hand, failed to follow the RFP and the State’s written BAFO
2 request and instead proposed charging \$0.25 per minute for video calls and \$0.07 per minute for
3 international voice calls, both of which exceeded the NTE of \$0.05 per minute. *See id.* at Ex. 13,
4 GTL BAFO. Nonetheless, the State did not disqualify GTL. Instead, the State, on December 10,
5 2020, sent GTL an email, requesting GTL, among other things, agree to lower its video call rate to
6 \$0.20 per minute. *See id.* at ¶23 & Ex. 8. GTL sent an email agreeing to the State’s request and
7 confirming that GTL would lower its video calling rates to \$0.20 *per minute*. *Id.*, Ex. 8, 12/11/20
8 email from M. Caesar to M. Patterson & K. DeAngelis.

9 **C. The State Awards a New Contract to GTL.**

10 The State purported to evaluate Securus’ and GTL’s BAFOs using some evaluation criteria
11 contained in the RFP, but failed to follow the RFP’s mandate that would have required it to
12 disqualify GTL for its clear failure to comply with the NTE. *Id.*, Ex. 7, Evaluation and Selection
13 Report. Shockingly, the State gave GTL the full 600 points for Cost, even though it failed to comply
14 with the NTE and clearly proposed prices that were far higher than Securus. Securus received only
15 284 points for Cost. As a result of this failure to follow the RFP (along with other such failures),
16 the State’s Evaluation and Selection Report concluded that GTL had the highest BAFO score,
17 curiously stating that GTL “provided the most value effective Incarcerated individuals
18 Communications and Technology Solution.” *Id.*, Ex. 7, Evaluation and Selection Report.

19 On December 22, 2020, the State issued a notification of intent to award the Contract
20 pursuant to the RFP to GTL. *See id.*, Ex. 5, Intent to Award. On December 28, 2020, the State
21 executed the Contract with GTL which became effective on December 31, 2020. *See id.*, Ex. 11
22 Contract.

23 On February 3, 2021, Securus representatives had a debriefing conference with CDT. *See*
24 *id.* at ¶29. During the debriefing, CDT confirmed what it told Securus during negotiations - that
25 the \$0.05 per minute NTE applied to video calls and that Securus should submit its proposed video
26 calling rate as the RFP requested *per minute* despite the RFP form’s request for a per transaction
27 (i.e., per video call) rate. *See id.* at ¶30.

1 During the debriefing, Securus informed CDT that GTL’s proposed video calling rate was
2 over 500% the NTE rate, and GTL’s proposed international rate was 40% over the NTE rate. *See*
3 *id.* at ¶31. Securus also explained that an evaluation of GTL’s video calling rates as per the stated
4 terms of the RFP on a per minute basis shows that GTL’s annual video calling cost will be
5 approximately \$13,500,000 per year (i.e., \$0.25 per minute rate x 30 minutes per call x 1,800,000
6 calls = \$13,500,000 per year). *See id.* at ¶32. CDT declined to respond or discuss these issues in
7 the debriefing and directed Securus to file this Petition for a Writ, but thanked Securus for bringing
8 this “**potentially serious issue to their attention.**” *See id.* at ¶33 (emphasis added).

9 **III. ARGUMENT**

10 **A. Judicial Standard for Issuance of Writ of Mandate.**

11 California’s public contracting requirements are designed to protect taxpayers and ensure
12 fairness. Indeed, the California Supreme Court has recognized that such requirements are “intended
13 to assure a healthy degree of competition, to guard against discrimination, favoritism, or
14 extravagance and to assure the best social, environmental, and economic result for the public.”
15 *Michaelis, Montanari & Johnson v. Superior Court* 38 Cal. 4th 1065, 1073 (2006). Moreover, the
16 California Court of Appeals has recognized that these requirements “are enacted for the benefit of
17 property holders and taxpayers, and not for the enrichment of bidders, and should be so construed
18 and administered as to accomplish such purpose fairly and reasonably with sole reference to the
19 public interest.” *Eel River Disposal & Res. Recovery, Inc. v. Humboldt*, 221 Cal. App. 4th 209, 232
20 (2013). The awarding of public contracts requires close scrutiny, “because deviations from strict
21 adherence to competitive bidding standards may facilitate corruption or extravagance, or affect the
22 amount of bids or the response of potential bidders.” *Id.* at 236; *see, e.g., Schram Constr., Inc. v.*
23 *Regents of the University of Calif.*, 187 Cal. App. 4th 1040, 1052 (2010) (“Because of the potential
24 for abuse arising from deviations from strict adherence to [competitive bidding] standards, ... the
25 letting of public contracts universally receives close judicial scrutiny.”).

26 It is black-letter procurement law that *all* bidders must be evaluated on a common standard.
27 *See Baldwin-Lima-Hamilton Corp. v. Superior Court*, 208 Cal. App. 2d 803, 821 (1962). Where
28 there is no common standard on which bids are based, the integrity of the competitive bidding

1 process is violated and the purpose of competitive bidding is frustrated. *See, e.g., id.; see also,*
2 *Pozar v. Department of Trans.*, 145 Cal. App. 3d 269, 271 (1983) (explaining that an agency must
3 comply with the terms in its own solicitation).

4 An agency can only award a contract pursuant to an RFP to a responsive and responsible
5 vendor. *See Eel River Disposal & Res. Recovery*, 221 Cal. App. 4th at 220-21. “A bid is responsive
6 if it promises to do what the bidding instructions demand.” *Great West Contractors, Inc. v. Irvine*
7 *Unified Sch. Dist.*, 187 Cal. App.4th 1425, 1452 (2010); *see also Eel River Disposal & Res.*
8 *Recovery*, 221 Cal. App.4th at 238 (“A basic rule of competitive bidding is that bids must conform
9 to specifications, and that if a bid does not so conform, it may not be accepted.”) (internal quotes
10 omitted). A proposal that violates the mandatory requirements of the solicitation at the time of
11 award is nonresponsive and unacceptable. *See id.* (recognizing that where “the deviations from
12 such strict compliance are not minor technicalities or nonsubstantive, but rather are capable of
13 facilitating corruption or extravagance, or likely to affect the amount of bids or response of potential
14 bidders, the deviating bid must be set aside.”).

15 When a public agency’s award of a contract does not comply with these principles of
16 California law, a writ of mandate is an appropriate remedy. *See, e.g., MCM Constr. v. City and*
17 *County of San Francisco*, 66 Cal. App. 4th 359, 368 (1998) (a court should issue a writ of mandate
18 when an agency’s award of a contract was “arbitrary, capricious, entirely lacking in evidentiary
19 support or inconsistent with proper procedure”); *Monterey Mechanical Co. v. Sacramental*
20 *Regional County Sanitation Dist.*, 44 Cal. App. 4th 1391, 1399 (1996) (writ of mandate to be the
21 proper vehicle to compel award of contract to lowest responsible bidder). The Public Contract
22 Code specifically provides that a writ of mandate is the only remedy to protest the results of a
23 negotiation process pursuant to an RFP, such as in this case. *See Cal. Pub. Contract Code* § 6611(d).
24 (“An unsuccessful bidder has no right to protest the results of [a] negotiating process undertaken
25 pursuant to [Section 6611 of the Code]. As a remedy, an unsuccessful bidder may file a petition
26 for a writ of mandate in accordance with Section 1085 of the code of Civil Procedure....”).

27 “There are essentially two prerequisites to issuance of a writ of mandate under Code of Civil
28 Procedure section 1085: (1) the respondent has a clear, present, and usually ministerial duty to act,

1 and (2) the petitioner has a clear, present, and beneficial right to performance of that duty.”
2 *Monterey Mechanical*, 44 Cal. App. 4th at 1413-14. As shown below both these elements are
3 satisfied because: (i) the State had a legal duty which it failed to uphold by properly analyzing cost
4 and references, and not disqualifying GTL; and (ii) Securus has a right to be treated fairly in the
5 bidding process and have to have CDT carry out its duty to properly analyze cost and references
6 and disqualify GTL.

7 **B. The State Failed to Properly Analyze Cost.**

8 **1. CDT Failed to Disqualify GTL for Exceeding the RFP’s \$0.05 per**
9 **Minute NTE.**

10 Section 5 of the RFP made clear that the bidder’s rates for all calls could not exceed \$0.05
11 per minute:

12 **The State has established not-to-exceed (NTE) rates for this procurement.**
13 **Bidder’s rates for calls must not exceed \$.05 per minute. Bidders may propose**
14 **rates lower than the NTE identified.**

14 Conklin Decl., Ex 1, RFP Pts 1 and 2 Addend 2 at Section 5, page 90-91 of 230.

15 And during negotiations, the State confirmed to Securus that the RFP’s NTE cap applied to
16 **all calls**, inclusive of video calls and international calls. *See id.* at ¶14.

17 GTL’s BAFO failed to comply with the \$0.05 NTE and instead proposed charging a video
18 calling rate of \$0.25 per minute and an international voice calling rate of \$0.07 per minute. *See id.*
19 at ¶31& Ex. 13. As the CDT’s Procurement Official, Katie DeAngelis, has admitted in a deposition,
20 a bidder should be disqualified if it exceeds the NTE. *See Wickard Decl., Ex. 1, DeAngelis Depo.*
21 at 40:4-22. Rather than disqualify GTL because both its video calling rate and its international
22 voice calling rate exceeded the RFP’s \$0.05 per minute NTE, the State continued to negotiate with
23 **GTL only**, getting GTL to lower its video calling rate to \$0.20 per minute. As Ms. DeAngelis
24 admitted in a deposition, this \$0.20 per minute rate was still higher than the RFP’s NTE. *See*
25 *Wickard Decl., Ex. 1, DeAngelis Depo.* at 51:6-15.

26 As the result of CDT’s failure to disqualify GTL for not complying with the RFP’s NTE
27 cap on calling rates for **all calling types**, GTL will be charging inmates and their families a per
28

1 minute video calling rate which is approximately 500% over the NTE, and a per minute
2 international voice calling rate which is approximately 40% over the NTE.

3 The State had a duty to disqualify GTL and its failure to do so violated the RFP and
4 California law and shows Securus is entitled to a writ of mandate.

5 **2. CDT Granted GTL an Unfair Competitive Advantage Over Securus in**
6 **Improperly Evaluating Cost.**

7 Industry-wide, video calling in correctional facilities has exploded in recent years
8 throughout the country. More and more departments of corrections, like California, are
9 implementing video calling on a full time basis. As the global pandemic has restricted—if not
10 eliminated—the ability of families to visit incarcerated individuals, video calls are often the only
11 way families can maintain face-to-face contact with incarcerated individuals. When both voice
12 calling and video calling are available in a facility, incarcerated individuals and their families
13 continue to increase the utilization of video calling. *See* Conklin Decl. at Ex. ¶34.

14 Here, in both its original cost proposal and in its BAFO cost proposal, Securus proposed
15 video calling rates and international calling rates that complied with the RFP’s \$0.05 per minute
16 NTE. GTL’s BAFO, on the other hand, proposed video calling rates and international calling rates
17 that did not comply with the RFP’s \$0.05 per minute NTE. This was an unfair advantage that no
18 other offeror received. Had the State provided Securus with the same opportunity it provided
19 GTL—to charge video calling rates that exceeded the NTE—Securus could have re-structured its
20 cost offer during the BAFO to among other things, charge lower voice calling rates and higher
21 video calling rates, and potentially receive more cost points.

22 Not surprisingly, without the burden of having to comply with the RFP’s NTE for video
23 calls and the anticipated increase in video calling utilization that will follow once the State
24 implements video calling full time, GTL was able to follow the request the State made to GTL (but
25 not to Securus) during negotiations, to also reduce its telephone calling rates. As a result, the State
26 concluded GTL submitted the lowest cost and GTL received the maximum amount of cost points
27 available with 600 points while Securus received a cost score of 284 points. *Id.*, Ex. 7, Evaluation
28 and Selection Report.

1 This unfair advantage to GTL has real consequences. Had the State performed a like
2 comparison of Securus and GTL’s BAFO video calling rates on a per transaction basis, it would
3 have determined that GTL’s annual video calling cost will be approximately \$13,500,000 per year
4 - i.e., \$0.25 per minute rate x 30 minutes per call x 1,800,000 calls = \$13,500,000 per year and
5 Securus’ annual video calling cost will be approximately \$2,106,000 (i.e., \$0.039 per minute rate
6 x 30 minutes per call x 1,800,000 calls = \$2,106,000 per year). *See id.* at ¶32. In other words,
7 because of the State’s improper Cost evaluation and scoring, incarcerated individuals and their
8 friends and families will be paying ***over \$11,000,000 more per year or \$110,000,000 more over***
9 ***the potential ten-year life of the contract for video calling than they would have under Securus.***

10 In sum, the State’s granting of GTL an unfair competitive advantage is yet another reason
11 why Securus is entitled to a writ of mandate.

12 **C. CDT Failed to Properly Analyze References.**

13 **1. CDT Failed to Disqualify GTL for Submitting False and Misleading**
14 **References.**

15 In order for the State to determine if the bidders could comply with the RFP’s requirements
16 and if they were responsive and/or responsible, the RFP required the bidders to submit customer
17 references:

18 The Bidder must complete and submit as part of the proposal response, Exhibit 19.1:
19 Bidder Qualification Form, to confirm that the Bidder’s experience meets all the
20 minimum requirements identified in Exhibit 19.1: Bidder Qualification Form. It is
21 incumbent upon the Bidder to provide enough detail in Final Proposal for the state
22 to evaluate the Bidder’s ability to meet the requirements and perform the services
23 as described in this solicitation.

22 The purpose of the bidder reference requirement is to provide the State the ability to
23 assess the bidder’s experience in providing similar or relevant services to other
24 organizations through a satisfaction rating provided by the bidder’s previous project
25 clients. The description of their projects must be detailed and comprehensive enough
26 to permit the State to assess the similarity of those projects to the work anticipated
27 for the Contract resulting from this solicitation. The CDCR cannot be used as a
28 reference to satisfy this requirement.

27 Conklin Decl., Ex. 1, RFP Pts. 1 and 2 Addend. 2 at §§4.1.1 and 4.1.2, pp. 74-75 of 230; *see also*
28 *id.* at §3.22.2, p. 69 of 230 (“The purpose of the customer reference requirement is to provide the

1 State the ability to verify the claims made in the proposal by the Bidder.”).

2 At a minimum, and as a mandatory requirement, the bidder had to submit references
3 showing that it had “*Five (5) years of experience* providing Incarcerated individual
4 communications services *with similar complexity to that outlined in this Statement for Work*
5 *(SOW)*. Experience must be within the last eight (8) years.” *Id.*, Ex. 1, RFP Pts. 1 and 2 Addend.
6 2 at Ex. 19.1, pp. 169-70 of 230 (emphasis added). The RFP further provided that providers may
7 meet this requirement by submitting at least two projects but no more than four projects:

8 The Bidder must provide information for a minimum of two (2) projects. A separate
9 Exhibit 19.1: Bidder Qualification Form must be submitted for every project used
10 to meet the minimum required experience. Any given project may meet multiple
11 requirements, but at least two (2) projects and not more than four (4) projects must
12 be provided to meet the requirements in Exhibit 19.1: Bidder Qualification Form. If
13 more than four (4) Bidder Qualification Forms are submitted, only the first four (4)
14 in the order presented in the proposal will be evaluated.

15 *Id.*, Ex. 1, RFP Pts. 1 and 2 Addend. 2 at §4.1.1, p. 74 of 230.

16 The RFP provided that bidders could be rejected for providing false or misleading
17 statements or non-applicable references. *Id.*, Ex. 1, RFP Pts. 1 and 2 Addend. 2 at §2.4.11, p. 49
18 of 230. Additionally, if references did not demonstrate the bidder had the requisite years of
19 experience, the Bidder could be deemed non-responsive. *Id.*, Ex. 1, RFP Pts. 1 and 2 Addend. 2 at
20 Ex. 19, p. 168 of 230.

21 Here, GTL provided the following four references: North Carolina DOC, South Carolina
22 DOC, Los Angeles County and Maricopa County, Arizona. *Id.*, Ex. 10, GTL reference score sheets.
23 However, CDT did not contact these references or do any reference checks. *See Wickard Decl.*,
24 Ex. 1, DeAngelis Depo. at 61:22-63:8. CDT never verified the claims made by GTL in its proposal.
25 Instead, it just accepted whatever GTL told it about its references.

26 Had the State performed any reference checks, it would have concluded that none of GTL’s
27 references demonstrate that GTL has experience providing all such services at another jurisdiction
28 that is “similar in complexity:”

- **North Carolina DOC**: The State recognized that the information GTL had supplied regarding North Carolina was not “clear as to what quantity and type of services were provided at each location” and requested GTL supply additional information regarding the services it provided to North Carolina DOC. Conklin Decl., Ex. 9, 10/30/20 Bid Clarification or Action Item Request. In response, GTL stated that it currently provides

1 incarcerated individual telephones for North Carolina DOC, and “*is in the process of*
2 *deploying*” GTL’s advanced wireless network along with wireless tablets and kiosks for
3 video visitation and offender services.” *Id.* (emphasis added). In other words, GTL
acknowledged that it does not currently provide North Carolina DOC with tablets and video
visitation.

- 4 • **South Carolina DOC:** GTL only provides South Carolina with incarcerated individual
5 telephone services. It entered a contract to provide tablets in December 2018 and has not
6 completed roll-out of video visitation. Currently there is only one pilot location for video
7 visitation. See <http://www.doc.sc.gov/family/visitation.html>. Even if a pilot can be deemed
8 as experience of “similar complexity” as California (which is described clearly in the
9 statement of work to include video, tablets, AND telephone services), at best GTL has only
10 been providing tablets and video visitation to South Carolina for two years, though they
claimed 5 years of experience.
- 11 • **Maricopa County, Arizona:** GTL entered a contract to provide tablets and video calls to
12 Maricopa County that was effective December 2019. See Conklin Decl., Ex. 14. Even
13 assuming the execution of a contract signified the start of providing services, at best, GTL
14 only has one year of providing Maricopa County with services similar of “similar
complexity” as contained in the RFP, though the bid referenced 5 years of experience.
- 15 • **Los Angeles County, California:** The State recognized that GTL’s “project description
16 and/or description of services provided is insufficient to demonstrate similar complexity”
17 and requested GTL provide additional information so the State could evaluate GTL’s ability
18 to meet the requirements. Conklin Decl., Ex. 9, 10/30/20 Bid Clarification or Action Item
19 Request. In response, GTL admitted it only provides limited video calling and does not
20 provide tablets, stating that it currently provides “kiosks for video visitation and video relay
21 service as well as lobby kiosks for trust deposits.” *Id.*

22 GTL’s references failed to comply with the RFP. This rendered GTL nonresponsive and a
23 non-responsible bidder. The State’s failure to disqualify GTL violated California law and the RFP.

24 2. **The State Improperly Scored References and Minimum Qualifications.**

25 As explained above, none of the four references submitted by GTL show that it has the
26 requisite experience demanded in the RFP of providing all three services. Nor does the sum of
27 experience, even if measured against contract start dates, meet the minimum required by the RFP’s
28 Statement of Work—incarcerated individual telephones, incarcerated individual tablets, and video
visitation for five years. As such, GTL’s proposal should have again been rejected.

However, the State scored GTL as providing all three services to North Carolina for five
years, as providing all three services to South Carolina for five years, as providing all three services
to Maricopa County for five years, and as providing two out of three services to Los Angeles
County for ten years. See Conklin Decl., Ex. 10, GTL reference scoring worksheets.

As a result, GTL received 24 points for its references, and 16 points for experience, when
in fact they did not meet the minimum qualifications to bid as outlined by the RFP. *Id.* This scoring

1 violates the State’s duty to follow the RFP. It also contradicts the State’s own commentary to GTL.
2 This is yet another reason why Securus is entitled to a writ of mandate.

3 **D. The State has a Clear Public Duty to Award the Contract in Accordance with**
4 **the RFP and California Law.**

5 Where the respondent’s duty is clear and the writ seeks enforcement of a public duty,
6 mandate should be granted. *Marshall v. Pasadena Unified School District*, 119 Cal. App. 4th 1241,
7 1252 & 1258 (2004) (holding that writ properly issued where School District’s failed to properly
8 follow bidding procedures); *Madera Cmty. Hosp. v. County of Madera*, 155 Cal. App. 3d 136, 141
9 & 146 (1984) (holding that even if interest in seeking writ is primarily private and financial,
10 consideration of the public interest is factor considered in granting a writ). The State’s duty to
11 follow the RFP and California’s Competitive bidding requirements are a public duty. *See Eel River*
12 *Disposal & Res. Recovery*, 221 Cal. App. 4th at 232 (public procurement requirements “are enacted
13 for the benefit of property holders and taxpayers, and not for the enrichment of bidders, and should
14 be so construed and administered as to accomplish such purpose fairly and reasonably with sole
15 reference to the public interest.”). A contract that is awarded in violation of statutes or regulations
16 or that is otherwise non responsive is void and without effect. *See, e.g., Miller v. McKinnon*, 20
17 Cal. 2d 83, 87-88 (1942); *Marshall v. Pasadena Unified Sch. Dist.*, 119 Cal. App. 4th 1241, 1259
18 (2004). In such cases, the contract award must be set aside. *See Eel River Disposal & Res.*
19 *Recovery*, 221 Cal. App. 4th at 240 & n. 12; *see also West Coast Air Conditioning Co. Inc. v.*
20 *CDCR*, 21 Cal. App. 5th 453, 468 (2018) (courts must “further the important public policies
21 underlying the competitive bidding laws of ‘encouraging proper challenges to misawarded public
22 contracts by the most interested parties, and deterring government misconduct”).

23 Here, the public and the taxpayers have an interest in the enforcement of the State’s public
24 contracting laws. As explained above, the State violated California law and the RFP in multiple
25 ways, any one of which constitutes the necessary violation to enter a writ of mandate. A writ of
26 mandate will prevent the State from violating California law, will affirm Securus and the public’s
27 rights to a proper RFP process, and most importantly, will protect the public from the potentially
28 harmful effects of high incarcerated individual calling rates. This Court, like other California courts

1 routinely do, should issue a writ of mandate and set aside the State’s illegal award to GTL. *See,*
2 *e.g., Marshall*, 119 Cal. App. 4th at 1252, 1258 (holding that writ properly issued to set aside award
3 of public contract as a result of School District’s failure to use proper competitive bidding
4 procedures).

5 **V. CONCLUSION**

6 For all the foregoing reasons, a Writ of Mandate is necessary and this Court should issue a
7 writ of mandate and: (i) enjoin CDT’s award and execution of the Contract with GTL; (ii) declare
8 the Contract illegal and void; and (iii) require CDT to disqualify GTL and award the Contract to
9 Securus. Alternatively, Securus requests that the Court require the State to conduct a re-bid in
10 accordance with California law.

11 K&L GATES LLP

12
13 Dated: July 27, 2021

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