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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]  
  
**PETITIONER SECURUS  
TECHNOLOGIES, LLC'S REPLY  
BRIEF**  
  
Date: September 10, 2021  
Time: 9:00 a.m.  
Dept.: 17  
  
*[filed concurrently with Supplemental  
Declaration of Joshua Conklin and  
Supplemental Declaration of William  
Wickard]*

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1 **I. INTRODUCTION**

2 The State and GTL<sup>1</sup> spend the vast majority of their briefs attempting to argue that when  
3 the State used the term “rates” and “calls” in the RFP’s NTE rates cap section - it only meant one  
4 rate for domestic telephone calls. No amount of discretion gives the State the ability to change the  
5 meaning of the term “rates” and “calls” in the RFP’s NTE rates cap section to only mean the rate  
6 for “domestic telephone calls.” The RFP provides the “Rules of the Game” for this procurement  
7 and the RFP’s words have meaning. The word “domestic” and “telephone” do not exist in the in  
8 the RFP’s NTE rates cap section. As such, the State should have disqualified GTL for violating  
9 the NTE rates cap for video and international calls and awarded the Contract to Securus. Because  
10 it did not, the Contract is void and of no effect.

11 In their briefs, neither the State nor GTL have provided any reason why this Court should  
12 not grant a writ of mandate and declare the Contract illegal and void and require CDT to either  
13 award the Contract to Securus or conduct a re-bid. As explained in more detail below: (i) the State  
14 and GTL’s various attempts to justify the State’s failure to disqualify GTL for exceeding the RFP’s  
15 NTE rates cap have no merit; (ii) the State and GTL’s attempts to justify the State’s failure to  
16 properly analyze GTL’s references have no merit; and (iii) the State and GTL’s arguments that this  
17 Court cannot void the illegal Contract because GTL began performing the Contract have no merit.

18 **II. ARGUMENT**

19 **A. The State and GTL’s Various Attempts to Justify the State’s Failure to**  
20 **Disqualify GTL for Exceeding the RFP’s \$0.05 Per Minute NTE Rates Cap**  
21 **Have No Merit.**

22 The State and GTL admit that GTL’s BAFO exceeded the RFP’s \$0.05 per minute NTE  
23 rates cap in two ways: (i) charging \$0.07 per minute for international voice calls; and (ii) charging  
24 \$0.25 per minute for video calls (which GTL later lowered to \$0.20 per minute at the State’s  
25 behest). The State and GTL make several arguments in an attempt to justify the State’s failure to  
26 disqualify GTL. None of these arguments have any merit.

27 \_\_\_\_\_  
28 <sup>1</sup> Unless otherwise defined herein, capitalized terms shall have meanings set forth in Securus’  
Opening Brief.

1                   1.     **The NTE Rates Cap Applied to All Calls, Including International Voice**  
2                                    **Calls and Video Calls.**

3                   The State and GTL spend the vast majority of their briefs arguing that even though the State  
4 used the term “calls” in the RFP’s NTE rates cap section, the cap should somehow “only apply to  
5 domestic telephone calls.” State Brief at 10; *see also id.* at 5-6, 9-14; GTL Brief at 15-26. This  
6 contention has no merit.

7                   Section 5 of the RFP could not be more clear - it established mandatory NTE “*rates*” of  
8 \$0.05 per minute for all “*calls*” so the State could perform a “straightforward” cost comparison and  
9 get the lowest “*rates, fees, and product cost*” for Incarcerated individuals, family and friends.

10 Failure to comply with the NTE rates was grounds for rejection:

11                   **5 COST**

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

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

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

20 The intent is to structure the pricing format in order to facilitate a straightforward  
21 comparison among all Bidders and foster competition to obtain the best market  
22 pricing to ensure the lowest possible rates, fees, and product cost for Incarcerated  
23 individuals, family, and friends. Since no commissions are paid to the State, the  
24 pricing for CTS services are expected to be lower than other State DOCs and shall  
25 not exceed the current rates/pricing for these services. Consequently, the CDCR  
26 requires that each Bidder’s cost be in the format outlined in this section. Therefore,  
27 the Bidder is advised that failure to comply with the instructions listed in this  
28 section, such as submission of an incomplete proposal, use of alternative pricing  
structures or different formats than the one requested, may be the basis for rejection  
of the Bidder’s proposal.

Conklin Decl. at Ex. 1, RFP Pts. 1 and 2 Addend. 2 at §5, pp. 90-91 of 230 (emphasis in original).

Both GTL and the State argue that the RFP’s Cost Worksheet somehow shows the NTE  
rates only apply to domestic voice calling because “Each Video Call (i.e., Video Visitation)” was  
listed in a section in the Worksheet entitled “Other Offender Communication” and not in a section

1 entitled “Telephone Call Rates and Charges.”<sup>2</sup> See State Brief at 10-11; GTL Brief at 20. However,  
2 the State and GTL conveniently fail to mention that “International Calls” is listed in the “Telephone  
3 Call Rates and Charges” section of the Worksheet. See Conklin Decl. at Ex. 13, GTL’s BAFO Cost  
4 Worksheet. In other words, even if the State and GTL were correct that Section 5’s use of the term  
5 “calls” only means those items in the Worksheet’s “Telephone Call Rates and Charges” section  
6 (which they are not), ***GTL still violated the RFP’s NTE rates cap by including an international***  
7 ***calling rate of \$0.07 per minute.***

8 Nothing in the RFP’s Cost Worksheet, or any other provision of the RFP, suggests that  
9 contrary to Section 5’s plain language, the NTE rates cap only applies to domestic voice calls. The  
10 sole fact that Section 5 used the plural term “rates” indisputably defeats any notion that the cap  
11 only applied to one rate - for domestic phone calling. Moreover, various definitions contained in  
12 the RFP’s glossary of terms confirmed why Section 5 used the plural term “rates.” For instance, in  
13 the definitions for “Call Detail Record” and “Outbound Call,” “call” refers to **both telephone and**  
14 **video calls.** See *id.*, Ex. 1, RFP Pts. 1 and 2 Addend. 2 at Attach. 5, pp. 223-24 of 230 (“Call Detail  
15 Record” includes details of “telephone ***[and] video phone***” calls) (“Outbound Call” includes  
16 “telephone ***[and] video***” calls) (emphasis added). Moreover, Section 5 made clear that the reason  
17 the State was establishing such NTE “**rates**” was so that it could perform a straightforward  
18 comparison of the cost category (which included the cost of domestic voice calls, international  
19 voice calls, and video calls) and get the lowest “**rates**, fees, and product cost for Incarcerated  
20 individuals, family and friends.” The State evaluated both the costs of video calls and international  
21 voice calls under the cost category and it would make no sense to somehow except them from the  
22 NTE rates if the purpose was to get the lowest rates, fees and costs for Incarcerated individuals,  
23 family and friends.

---

24 <sup>2</sup> The State argues the NTE rates cap does not apply to video calls because “[f]or other  
25 services, however, including ‘live video calling and electronic messaging,’ ‘emails and e-Cards,’  
26 and ‘e-letters, photos and video clips,’ the RFP did not mention any current rate for these alternative  
27 services and did not proscribe any price increases.” State Brief at 11. This strains credulity. The  
28 State does not currently have video calling and thus the RFP could not have mentioned any price  
for video calling as it did for voice calls. See Conklin Decl. at Ex. 1, RFP Pts. 1 and 2 Addend. 2  
at §1.4.4.1, pp. 30 of 230 (“the most significant change is the implementation of live video calling  
and electronic messaging”). This is not a valid reason to not apply the NTE rates cap in accordance  
with its plain language to all “calls” including video calls and international calls.

1 If the State wanted the NTE rates to only apply to domestic voice calls, it could have easily  
2 done so by using the singular word “rate” and including two additional words in Section 5 so that  
3 it read: “Bidder’s *rate* for [*domestic voice*] calls must not exceed \$.05 per minute.” It did not do  
4 so. Simply put, nothing in the RFP even remotely suggests the \$0.05 NTE rates only apply to  
5 domestic voice calls. This argument defies common sense.

6 Recognizing as much, the State resorts to desperately arguing (in an argument that GTL  
7 does not join) that the NTE rates should only apply to domestic voice calls based upon the RFP  
8 issued by New York. *See* State Brief at 12-13. New York’s RFP is irrelevant to whether the NTE  
9 rates cap in California’s RFP applies to only domestic voice calls. In any event, the New York  
10 language quoted and referred to by the State in its brief is contained in an RFP section specifically  
11 entitled “Domestic.” DeAngelis Decl., Ex. 1, at 6-8. In other words, New York - unlike California  
12 which included its NTE rates cap in a section entitled “Cost” - explicitly made clear that its NTE  
13 rate applied to domestic voice calls only. As such, New York’s RFP shows that California’s NTE  
14 rates cap applies to *all* calls because if it wanted to limit the NTE rates cap to domestic voice calls  
15 instead of all calls, it would have explicitly done so like New York did in its RFP.

16 **2. Securus Has Not Waived its Right to Challenge GTL’s Failure to**  
17 **Comply with the NTE Rates Cap By Not Submitting a Question**  
**Regarding the NTE During the RFP’s Q&A Process.**

18 The State and GTL also argue that Securus cannot challenge the State’s failure to disqualify  
19 GTL because it never sought “written clarification of the application of the NTE rate.” State Brief  
20 at 14; *see also* GTL Brief at 19-20. This argument is absurd.

21 As an initial matter, there was no reason for Securus to seek “written clarification” of the  
22 NTE rates cap. Section 5 was clear that bidder’s “rates” for all “calls” could not exceed \$0.05 per  
23 minute. Securus submitted an initial proposal that included “rates” for domestic voice calls,  
24 international voice calls and video calls that were all less than the \$0.05 per minute NTE rates cap.  
25 *See* Conklin Decl. at ¶¶ 7-8, 12-14, Ex. 2, Securus Cost Workbook.

26 Securus’ understanding of the RFP was confirmed during negotiations. First, during a  
27 December 1, 2020 negotiation session, the State told Securus the NTE rates cap applied to all calls  
28 and instructed Securus to submit a BAFO with a per minute video calling rate that complies with

1 the \$0.05 NTE rates. *See* Conklin Decl. at ¶ 14 & Ex. 7 at CDT000007. Then, the State issued a  
2 written request for a BAFO to Securus that made this clear multiple times, including:

- 3 • “As discussed, ALL requirements listed in Exhibit 22 MUST be met and included  
4 in the not to exceed (NTE) price”
- 5 • “ALL service level agreements (SLAs) and the statement of work (SOW)  
6 requirement MUST be met in the NTE price.”
- 7 • “Per CTS RFP Parts 1 and 2 Addendum 2, section 5, Cost, Bidder must remove all  
8 references of those services and features from their bid submission if the services  
and features are not available without remaining below the NTE requirement.”
- “Exhibits 24.1 through 24.13, Narrative Responses: If it is not included in the NTE  
rate as part of the proposed solution, remove references from narrative responses.”

9 *See* Conklin Decl. at ¶ 37 & Ex. 16. Notably, the request for BAFOs stresses that Securus must re-  
10 submit the RFP’s Exhibit 24.1 and remove anything not included in the NTE rate. Exhibit 24.1-  
11 requires a description of “how the outbound domestic and international telephone and video calls  
12 will be processed.” *See id.* at Ex. 1, RFP at Exhibit 24.1. There was no reason for Securus to believe  
13 the State meant “rates” and “calls” to mean something other than “rates” and “calls.” Accordingly,  
14 Securus had no reason to submit a request for written clarification of the NTE rates cap.

15 The State and GTL argue that the State’s instruction to Securus during negotiations is not  
16 binding based on one sentence contained in Section 2.2.2 of the RFP. *See* State Brief at 14; GTL  
17 Brief at 19. Section 2.2.2 provides a process for when bidders want to submit written questions to  
18 the State about the RFP prior to submitting a written proposal and states in part:

19 Only questions submitted in writing and answered in writing by the Procurement  
20 Official shall be binding and official...Oral communications by Agency/state entity  
21 officers and employees concerning this solicitation shall not be binding on the State  
and shall no way excuse the bidder of any obligations set forth in this solicitation.

22 Conklin Decl. at Ex. 1, RFP Pts. 1 and 2 Addend. 2 at §2.2, pp. 41 of 230. In other words, Section  
23 2.2.2 simply states a bidder cannot rely upon an oral communication from the State as an excuse  
24 for not complying with the RFP. Securus is not relying upon any oral communication to excuse a  
25 non-compliance with the RFP. Securus - unlike GTL - submitted an original proposal that complied  
26 with the RFP’s NTE rates cap. Then Securus - unlike GTL - submitted a BAFO that complied with  
27 the RFP’s NTE rates cap and the instructions it received from the negotiation process that all calls  
28 were to comply with the NTE rates. As the RFP made clear, the purpose of the negotiation and



1 BAFO process was to “clarify and document understandings reached during negotiations” which  
2 “could be conducted either orally or in writing.” *Id.* at §7.4, pp. 114-15 of 230.

3 Rather than submit any testimony contradicting the sworn declaration of Josh Conklin  
4 describing the State’s instruction to submit a BAFO with a per minute video calling rate that  
5 complies with the NTE rates during negotiations, the State merely argues that Securus cannot  
6 identify the specific person who gave the instruction. *See* State Brief at 15. Not true. During  
7 Securus’ December 1, 2020 negotiation session, the procurement official of this RFP process, Katie  
8 DeAngelis, instructed Securus to submit a BAFO with a per minute video calling rate that complies  
9 with the NTE rates. *See* Conklin Decl. at ¶ 14; Supplemental Conklin Decl. at ¶ 5. During that  
10 session, Mr. Conklin asked Ms. DeAngelis if the NTE rates cap of \$0.05 per minute applied to all  
11 call types and she responded “Yes.” Supplemental Conklin Decl. at ¶ 5. Mr. Conklin asked if this  
12 includes video calling and Ms. DeAngelis responded “Yes.” *Id.* Ms. DeAngelis later confirmed  
13 this to Mr. Conklin at Securus’ debriefing meeting. *Id.* at ¶ 6; Conklin Decl. at ¶¶ 11-14, 29-30.

14 Mr. Conklin’s testimony is uncontradicted. In her deposition, Ms. DeAngelis, could not  
15 “recall the specifics discussed at that [negotiation] meeting;” including whether or not “there was  
16 any discussion of Securus’ rates at this negotiating meeting,” whether or not there “was any  
17 discussion of the RFP’s not-to-exceed rate at the Securus negotiation meeting,” or whether she or  
18 anyone else at the meeting told Securus that “the video-visitation rate had to comply with the not-  
19 to-exceed rate.” *See* Supplemental Wickard Decl. at Ex. 1, DeAngelis Depo. at 36:4-37:25; 56:5-  
20 6. Ms. DeAngelis also could not remember the “specifics” or what was discussed with Securus at  
21 the debriefing meeting. *Id.* at Ex.1, DeAngelis Depo at. 63:9-64:11.<sup>3</sup>

22  
23  
24  
25 \_\_\_\_\_  
26 <sup>3</sup> The State’s secondary procurement official, David Sanchez, could not remember whether  
27 he attended the negotiation meeting with Securus. *See* Supplemental Wickard Decl. at Ex. 2,  
28 Sanchez Depo. at 21:11-23:24. Mr. Sanchez also testified that he cannot remember the “details of  
that [debriefing] meeting” or “if there was any discussion of a not-to-exceed rate in that meeting.”  
*Id.* at Ex. 2, Sanchez Depo. at 26:22-27:20.

1                   3.     **The State Had No Discretion to Accept GTL’s Proposal and By Doing**  
2                   **So, it Granted GTL an Unfair Competitive Advantage.**

3             Both the State and GTL resort to arguing that because this was an RFP situation and not a  
4 lowest responsive bidder situation, the State somehow had the discretion to award the contract to  
5 GTL notwithstanding its failure to comply with the RFP’s NTE rates. *See* State Brief at 9-10; GTL  
6 Brief at 22 (“[T]he State certainly had discretion to accept proposals even if they deviated from any  
7 of the requirements in the RFP, including the purported requirement that the rate for all calls be  
8 five cents per minute or less.”); 14-15, 21-26. This argument, like the other arguments, lacks merit.

9             It is black-letter procurement law that “bids must conform to specifications, and that if a bid  
10 does not so conform, it may not be accepted” because this is the only way all vendors can be  
11 evaluated on a fair and common basis. *Konica Bus. Machs. U.S.A. v. Regents of Univ. of Cal.*, 253  
12 Cal. Rptr. 591, 593 (Cal. App. 1988); *see also Eel River Disposal & Res. Recovery v. Humboldt*,  
13 221 Cal. App. 4th 209, 232 (2013). If one vendor submits a proposal that fails to conform to a  
14 material requirement, the agency must reject it or provide notice and equal opportunity for all  
15 vendors to submit a proposal on the same basis. *See, e.g., Baldwin-Lima-Hamilton Corp. v.*  
16 *Superior Court of S.F.*, 208 Cal. App. 2d 803, 821 (1962) (granting writ of mandate where winning  
17 bidder, unlike all other bidders, listed a manufacturer outside of the United States even though the  
18 bidding documents included a requirement that the listed manufacturer must be based in the United  
19 States and this requirement was unenforceable as a matter of law); *Matter of: Arthur Young &*  
20 *Company*, 85-1 CPD ¶598, 1985 WL 52801, at \*3 (Comp. Gen. May 24, 1985) (“[A]ny proposal  
21 which ultimately fails to conform with the material terms of the solicitation should be considered  
22 unacceptable and should not form the basis of an award. If an agency wishes to accept such a  
23 proposal, it must place the other offerors on notice of the specific changes and provide and equal  
24 opportunity for all offerors to compete for the requirement.”)

25             Critically, Ms. DeAngelis admitted that the State had no discretion to accept an offer that  
26 exceed the NTE rates as she testified that a bidder exceeded the NTE rates should have been rejected  
27 or disqualified. *See* Supplemental Wickard Decl. at Ex. 1, DeAngelis Depo. at 40:4-22. The NTE  
28 rates cap was a mandatory requirement that cannot be waived or somehow accepted by the State.

1 See Conklin Decl. at Ex. 1, RFP Pts. 1 and 2 Addend. 2 at §2.4.1, p. 46 of 230 (“The use of ‘shall,’  
2 ‘must,’ or ‘will’ (except to indicate simple futurity) in the solicitation indicates a requirement or  
3 condition which is mandatory.”). As the RFP made clear, any deviation from a mandatory  
4 requirement must be “resolved” and “corrected in the bidder’s BAFO.” *Id.* GTL never corrected  
5 its deviation from the NTE and its BAFO indisputably failed to comply with the RFP’s \$0.05 per  
6 minute NTE rates cap in two ways.

7 The State never exercised its discretion to: (i) disqualify GTL, or (ii) amend the RFP to  
8 provide all bidders the same opportunity as GTL to offer a lower domestic voice calling rate without  
9 having to comply with the same NTE rates cap for international voice calls and video calls. This  
10 granted GTL an unfair competitive advantage that no other bidder received. Without being  
11 burdened by the same RFP requirements as Securus and other bidders, GTL was able to submit a  
12 lower domestic voice calling rate (and thus received a perfect cost score). The State provides no  
13 satisfactory explanation for why the State failed to either disqualify GTL (as Ms. DeAngelis  
14 testified should have happened) or amend the RFP to provide all bidders with the same opportunity  
15 as GTL.

16 4. **Alternatively, at a Minimum, Admissions Contained in the State’s Brief**  
17 **Demonstrate the Contract Must be Re-Bid.**

18 As explained above and in Securus’ Opening Brief, the RFP is clear that the NTE rates cap  
19 applies to “rates” for all “calls” and the State should have disqualified GTL for proposing  
20 international voice and video calling rates that exceed \$0.05 per minute and awarded the Contract  
21 to Securus. Alternatively, at a minimum, the admissions contained in the State’s Brief shows that  
22 the Contract must be re-bid because the NTE rates cap was interpreted in two different ways.

23 “It is a long and well-established rule that where municipal contracts are required to be let  
24 upon public bidding, the proposals and specifications inviting such bids must be sufficiently  
25 detailed, definite and precise so as to provide a basis for full and fair competitive bidding upon a  
26 common standard and must be free of any restrictions tending to stifle competition.” *Baldwin-*  
27 *Lima-Hamilton Corp.*, 208 Cal. App.2d at 821. An RFP provision is ambiguous if it is “reasonably  
28 susceptible to more than one meaning.” *Dez Const. v. Callexico Unified Sch. Dist.*, D040819, 2003

1 WL 22924508, at \*6 (Cal. Ct. App. Dec. 11, 2003) (concluding that bidding documents were “not  
2 reasonably susceptible to more than one meaning and therefore are not, as a matter of law,  
3 ambiguous”). “Bidders cannot be required to guess at the standards by which they will be  
4 measured” and where an RFP contains ambiguous provisions, there is no common standard and the  
5 purpose of competitive bidding is frustrated. *Eel River Disposal & Res. Recovery*, 164 Cal. Rptr.  
6 3d at 338-39, *Baldwin-Lima-Hamilton Corp.*, 208 Cal.App.2d at 821. In such case, the award must  
7 be rescinded so the agency can clarify the RFP and afford bidders an opportunity to compete based  
8 on a common standard. *See, e.g., Eel River Disposal & Res. Recovery*, 164 Cal. Rptr. 3d at 338-39  
9 (where bidders are misled by the RFP, they “did not compete on a level playing field”).

10 Securus interpreted the RFP to mean the NTE rates cap applied to “*rates*” for all “*calls*”,  
11 including both video calls and international calls, and the State confirmed that interpretation during  
12 negotiations. *See* Conklin Decl. at ¶¶ 7-8, 12-14, Ex. 2, Securus Cost Workbook; Supplemental  
13 Conklin Decl. at ¶ 5. Ms. DeAngelis even testified it would be reasonable to assume “calls”  
14 includes video calls. Supplemental Wickard Decl. at Ex. 1, DeAngelis Depo. at 54:25-55:6.

15 On the other hand, the State now claims in its Brief, that it had a different interpretation of  
16 the NTE rates cap because it “drafted the RFP with NTE rates of \$0.05 per minute intending for  
17 such ‘rates’ to only apply to domestic telephone calls...” State Brief at 10. This in itself shows the  
18 RFP could be interpreted, and was interpreted, in two different ways. As such, bidders were not  
19 competing on a common standard and the taxpayers have been denied a fair and just competitive  
20 process. At a minimum, there must be a re-bid with a clarified RFP. This is the only way that  
21 bidders have the opportunity submit bid proposals based on a common standard. *See, e.g., Eel*  
22 *River Disposal & Res. Recovery*, 164 Cal. Rptr. 3d at 338-39 (rejecting award of contract where  
23 “bidders were misled [by RFP] and did not compete on a level playing field” because RFP did not  
24 make clear “evaluation of bids would turn on whether a bidders was locally owned and operated”).

25 **B. The State and GTL’s Attempts to Justify the State’s Failure to Properly**  
26 **Analyze GTL’s References Have No Merit.**

27 GTL admits that the references it submitted do not show it had the requisite five years  
28 providing the communications services required by the RFP. *See* GTL Brief at 27 (admitting GTL

1 has not been “providing certain tablets to certain of its reference customers for five years”). GTL  
2 is not supplying tablets or video calling to North Carolina or Los Angeles County and GTL has  
3 only been providing tablets and video calling to South Carolina for at best, two years and Maricopa  
4 County for at best, about a year. *See* Securus’ Opening Brief at 13-14. Nonetheless, the State and  
5 GTL argue this admitted failure to comply with the reference requirements is irrelevant because  
6 the State had the discretion to overlook it. *See* State Brief at 16-17; GTL Brief at 27. This is not  
7 true.

8 As an initial matter, failing to comply with the RFP’s mandatory requirement of having a  
9 cumulative five years’ experience in providing tablets and video calling cannot be waived or  
10 somehow accepted by the State. *See* Conklin Decl. at Ex. 1, RFP Pts. 1 and 2 Addend. 2 at §2.4.1,  
11 p. 46 of 230. Despite GTL never submitting any reference where it had provided video calling and  
12 tablets for five years, the State improperly concluded GTL had complied with this mandatory  
13 requirement. Specifically, the State’s scoresheets show that the State determined GTL had been  
14 providing the RFP’s three required services - including tablets and video calling - to North Carolina,  
15 South Carolina and Maricopa County for five years. *See* Conklin Decl., Ex. 10, GTL reference  
16 scoring worksheets. Such incorrect scoring is not surprising as the State admittedly never contacted  
17 GTL’s references, let alone verified how long GTL had been providing tablets and video calling to  
18 any of the references. *See* Wickard Decl., Ex. 1, DeAngelis Depo. at 61:22-63:8.

19 GTL resorts to arguing that the State’s failure to disqualify GTL was acceptable “given that  
20 GTL is the State of California’s incumbent provider of inmate communications services...” GTL  
21 Brief at 27. However, the RFP specifically prohibited bidders from using the State of California as  
22 a reference to satisfy this requirement at all. *See* Conklin Decl. at Ex. 1, RFP Pts. 1 and 2 Addend.  
23 2 at §4.1.2, p. 74 of 230 (“The CDCR cannot be used as reference to satisfy this requirement”); Ex.  
24 19, p. 167 of 230 (“Contract person for Bidder’s references must not be an employee of the  
25 California Department of Corrections and Rehabilitation (CDCR).”) Ex. 20, p. 175 of 230  
26 (“Contract person for staff’s references must not be an employee of CDCR.”). In other words,  
27 GTL’s contention that the State overlooked GTL’s noncompliance because it was the incumbent  
28 only further demonstrates the impropriety of the State’s evaluation of GTL’s references.

1           The State, for its part, relies extensively upon *Nat'l Identification Sys., Inc. v. State Bd. of*  
2 *Control*, 11. Cal.App.4th 1446 (1992), to claim the State's incorrect evaluation of GTL's references  
3 was acceptable. In that case, the court merely concluded that the State properly found a bidder that  
4 had used a prototype system at "a discretionary benchmark demonstration" that the State "was not  
5 required to hold" under the RFP satisfied certain technical requirements in the RFP. *See id.* at 1456.  
6 Here, as GTL admits, GTL did not comply with the RFP's mandatory requirement that the bidder  
7 provide references showing it had been providing the RFP's three communication services -  
8 telephone, tablets and video visitation - for at least five years. *See* GTL Brief at 27. Yet, as the  
9 State's scoring documents show, it incorrectly concluded GTL had provided the RFP's three  
10 required services - including tablets and video calling - to North Carolina, South Carolina and  
11 Maricopa County for five years. *See* Conklin Decl., Ex. 10, GTL reference scoring worksheets.  
12 Submitting references showing five years experience of providing the RFP's three communication  
13 services was not a discretionary requirement the State could ignore. It was mandatory. Nothing in  
14 *National Identification Systems* supports the State's failure to disqualify GTL for not complying  
15 with this requirement and improperly evaluating GTL as complying with the mandatory reference  
16 requirements.

17           **C. GTL and the State's Arguments That This Court Cannot Void the Illegal**  
18           **Contract Because GTL Has Begun Performing the Contract Have No Merit.**

19           Finally, GTL and the State both argue that this Court cannot grant any relief because GTL  
20 has begun implementation of the Contract. *See* GTL Brief at 28-29, State Brief at 18-21. This  
21 argument fails and makes no sense.

22           A contract that is awarded in violation of statutes or regulations or that is otherwise awarded  
23 to a nonresponsive vendor is void and without effect. *See, e.g., Marshall v. Pasadena Unified Sch.*  
24 *Dist.*, 15 Cal. Rptr. 3d 344, 359 (Cal. App. 2004); *Miller v. McKinnon*, 20 Cal. 2d 83, 87-88 (1942).  
25 Regardless of whether the vendor has begun performance, the contract must be set aside to further  
26 the important public policies underlying the competitive bidding laws and "encourage[e] proper  
27 challenges to misawarded public contracts by the most interested parties, and deterring government  
28 misconduct." *West Coast Air Conditioning Co. Inc. v. CDCR*, 21 Cal. App. 5th 453, 468 (2018)

1 (setting aside improperly awarded contract despite fact bidder had begun partial performance); *see*  
2 *also Konica Bus. Machs. U.S.A.*, 253 Cal. Rptr. at 596 (issuing a writ of mandate invalidating  
3 unlawfully-awarded contract and requiring rebid even though winning bidder had already begun  
4 work and claimed “that it will be economically devastated” as a result of contract work already  
5 performed); *Wilson & Wilson v. City Council of Redwood City*, 120 Cal. Rptr. 3d 665, 679 (Cal.  
6 App. 2011) (only full “completion” of a contract moots challenges to the validity thereof); *National*  
7 *Coach Corp. v. State Bd. of Control*, 137 Cal. App. 3d 750, n.1 (1982) (denying motion to dismiss  
8 challenge to contract as moot because “contract has been let and partially performed”); *Eel River*  
9 *Disposal & Res. Recovery*, 164 Cal. Rptr. 3d at 340 (invalidating improper award where winner  
10 had begun performance on 10-year contract but had not “fully or substantially performed” the  
11 contract).

12 Here, the Contract has a six-year term with four one-year options to extend for a total 10-  
13 year term. *See* Conklin Decl. at Ex. 1, RFP Pts. 1 and 2 Addend. 2 at § 1.3, p. 14 of 230. GTL has  
14 only been under the new Contract for roughly eight months, and by its own admission has only  
15 gone “live” at one CDCR facility so far. *See* GTL Brief at 8. By no means is this full or even  
16 substantial completion of the illegally awarded contract.

17 GTL also argues that this Court should not invalidate the Contract because Securus has  
18 somehow “elected to wait” to bring this action. GTL Brief at 29. This contention is false. At all  
19 times, Securus moved as quickly as possible with respect to invalidating the Contract.

20 The RFP and the Public Contract Code makes clear that Securus could not have filed a bid  
21 protest to the award and its only remedy was to file a writ of mandate. *See* Cal. Pub. Contract Code  
22 § 6611(d). The State issued the notification of intent to award on December 22, 2020. *See* Conklin  
23 Decl. at ¶¶ 19-21, 29-33. The very next day, Securus sent a CPRA request to the State requesting  
24 documents regarding the RFP process. *See id.* The State did not produce any documents in  
25 response to Securus’ requests until more than a month later. *See id.* Upon receiving and reviewing  
26 the documents, Securus immediately requested a debriefing conference as permitted by the RFP  
27 and raised the issues with the award to GTL during the debriefing of February 3, 2021. *See id.* The  
28 State declined to respond or discuss the issues raised by Securus and, instead, directed Securus to

1 file the Petition for Writ. *See id.* Securus filed the Petition a few days later on February 11, 2021  
2 and obtained a hearing on the merits<sup>4</sup> at the Court's first available date on which all counsel was  
3 available.

4 **III. CONCLUSION**

5 For all the forgoing reasons and as explained in Securus' Opening Brief, this Court should  
6 issue a Writ of Mandate and (i) enjoin CDT's award and execution of the Contract with GTL; (ii)  
7 declare the Contract illegal and void; and (iii) require CDT to disqualify GTL and award the  
8 Contract to Securus. Alternatively, the Court should require the State to conduct a re-bid in  
9 accordance with California law.

11 K&L GATES LLP

13 Dated: August 26, 2021

12 By: 

14 Christina N. Goodrich  
15 Zachary T. Timm  
16 Trevor J. Wynn  
17 Jason Richey (*Admitted Pro Hac Vice*)  
18 William Wickard (*Admitted Pro Hac Vice*)

19 *Attorneys for Petitioner Securus*  
20 *Technologies, LLC*

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22  
23  
24  
25  
26  
27 <sup>4</sup> The Court clerk informed counsel for Securus that if it wanted a preliminary injunction it  
28 would need to be a hearing on the merits, so Securus counsel set this matter for a hearing on the  
merits. In other words, there was no earlier time to bring this issue before the Court.