

INMATE AND PUBLIC PAYPHONE BID

Invitation-to-Bid (ITB) Number 07-X-2170936

Period of Contract – Three years fixed; with two, one year extension options

Award Method – Awarded by highest revenue percentage to State

Revenue Projections – Projections between highest apparent bidder and next awarded bidder for one year would be \$394,002, for three fixed years would be \$1,182,006, and for additional two, one year extensions would be \$1,970,010.

Reasons for *not* awarding to highest apparent bid –

There exist many requirements within the published ITB that uses the word “must” - This means that this requirement must be met (*no options*). It is the State’s long standing policy, to make an award strictly upon meeting all the published requirements in an ITB.

The evaluation team found several items that were identified as “must contain” in the ITB, but were not located within the bid at the public opening (*these items are identified on the attached Award Recommendation letter*). Below is a brief definition and explanation of these items.

1. **Financial Statements** - The Annual Financial Statement is usually requested to determine the stability of a supplier. In the past, some suppliers have not been able to support the financial investment necessary to service the State.
2. **Commission Reports** – This is a sample report of the revenues - how commissions are determined and how they will be distributed. The State must see these reports in advance of award, to ensure that it can properly distribute revenue.
3. **Management Information and Reports** – This is a battery of four management reports detailed within the ITB. These reports are used in the administration of the services obtained by this bid. In the past, some suppliers have not been able to supply such requirements, after being awarded an ITB.



STATE OF ALABAMA
DEPARTMENT OF FINANCE
INFORMATION SERVICES DIVISION

64 North Union Street, Suite 200
Montgomery, Alabama 36130-2626
Telephone (334) 242-3800
Fax (334) 242-7002

BOB RILEY
Governor

JAMES ALLEN MAIN
Director of Finance

ANDY HORNSBY
Assistant Finance Director

JIM BURNS
Chief Information Officer

MEMORANDUM

TO: Isaac Kervin, Director
State Purchasing Division

THROUGH: Jim Burns, CIO
Information Services Division

FROM: Julie Robertson, ISD Assistant Director
Applications Development and Support

DATE: December 8, 2006

SUBJECT: Invitation-to-Bid #07-X-2170936 (TA497) "Inmate and Public Payphone" Award Recommendation

Bid responses to ITB #07-X-2170936, Inmate and Public Payphone, have been evaluated. Three vendors submitted responses and pricing for this ITB, as follows:

<u>Vendor</u>	<u>Amount Bid</u>	<u>Line 1 %</u>	<u>Line 2 %</u>
T-Netix	\$6,925, 302	65.21 %	65.21 %
GTL	\$6,531,300	61.5 %	61.5 %
Talton	\$6,510, 090	60.858 %	100 %

Evaluation of the bid responses was performed by Julie Robertson (Finance ISD), Art Bess (Finance ISD) and Rachel Lee (Dept. of Corrections).

After analysis of the T-Netix bid response, we found the following discrepancies:

1. T-Netix did not include Financial Statements in the bid response as required in 5.3
2. T-Netix did not include a sample commission report as required in 8.12.1
3. T-Netix did not include all sample Information Management reports: Revenues and Commissions report (10.4.1), Service Outage report (10.4.3), Change of Telephone Numbers report (10.4.4), Periodic Inventory report (10.4.5).

Analysis of the next highest vendor, GTL (Global Tel Link), found the bid response to meet all requirements. Therefore, we recommend award of the Inmate and Public Payphone contract to Global Tel Link (GTL).

March 13, 2007

MEMO TO FILE RE: Department of Corrections Pay Phone Service ITB

By: RHC/MS

BACKGROUND

On October 11, 2006, the State of Alabama opened bids submitted in response to Invitation to Bid (ITB) 07-X-2170936 seeking to award a contract for the provision of prison and public pay telephone service statewide. This ITB proposed to award what amounts to an "exclusive franchise" to the successful bidder based on the highest commission rate paid to the State on revenues received from users of the pay phones.

The ITB included standard language expressing the policies and procedures of the Department of Finance Purchasing Division, including the following:

"The following is a partial list whereby a bid will be disqualified:

....

Required Information not submitted with bid."

Three bids were received and submitted to an evaluation committee comprised of representatives from Corrections and ISD. The evaluation was addressed to the level of commission offered by the bidder, then compliance with the technical requirements of the bid and then to technical elements of the bid.

It was determined that the most favorable bid was from T-Netix, a subsidiary of Securus. However, the evaluation committee determined that T-Netix's bid was not qualified because it did not include financial statements and specified reports.

The next most favorable bid was from Global Tel-Link (GTL). The evaluation committee recommended to the Purchasing Director that the award be made to GTL, which was done in December, 2006.

The third bidder was Talton. In conformance with the standard operating procedures of Purchasing, after determining that the commission offered was less than the other bidders, no further evaluation was made of the Talton bid.

T-Netix protested the award to GTL on the grounds that the GTL bid was also technically deficient in a number of aspects; primarily that it did not include required documents.

In the course of a meeting between T-Netix representatives Rad Gaines, Sonny Callahan and others with Department of Finance representatives, T-Netix's lawyer submitted a table of deficiencies it found with the bids of all three bidders. By a subsequent letter, legal counsel for T-Netix argues that application of the law to the facts

can only lead to the conclusion that the award to GTL must be set aside and the purchase be re-bid.

The evaluation committee re-evaluated the GTL bid in light of the assertions provided by T-Netix. The committee substantiated some of the deficiencies with the GTL bid that were asserted by T-Netix. The committee also found deficiencies with the bid of the third and final bidder, Talton Communications.

On February 14, 2007, Mose Stuart, Richard Cater, and Isaac Kervin met with representatives of GTL – Steve Windom, Claire Austin and its legal counsel, Joe Espy. It was Espy's position, on behalf of GTL, that disregarding the technical deficiencies of a bid is within the discretion of the Purchasing Director, as awarding authority. Espy's legal opinion is that any defects in the bid were waived when the award was made and thereafter contract law, not the bid law, governs the transaction. In support of his conclusions of the law, he submitted a number of Alabama Supreme Court (and one 11th Circuit) opinions dealing with the bid law and the discretion vested in the awarding authority in determining the lowest responsible bidder. In addition, Espy offered that GTL had expended \$400,000-700,000 preparing to execute the contract before it had received a directive to cease and desist further action.

The ITB provides that the contract period is 3 yrs from the date the contract is issued by the State. The Award notice specifies a contract period of 12/19/06 through 12/18/09. The current contract does not expire until April 2007. Neither the ITB nor the Award Notice address the four month overlap or provide for revenue distribution during the transition period.

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A meeting was held with the evaluation committee to review the process followed in evaluating the bids. The committee concluded that it had made a mistake in not analyzing the Global bid for compliance with all requirements of the ITB, including the failure to provide all required reports. They were not able to offer a rationale for the disregard of requirement that a bid must include all required information.

*****END*****