

**GEORGIA DEPARTMENT OF ADMINISTRATIVE SERVICES
STATE PURCHASING DIVISION**

In the Matter of:)	
)	
GLOBAL TEL*LINK CORPORATION)	
)	
Protestor.)	DOAS File: _____
)	
)	
GEORGIA DEPARTMENT OF CORRECTION,)	
)	
Agency.)	
)	
)	

Department of Administrative Services
State Purchasing Division
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APPEAL AND PROTEST OF DEPARTMENT OF CORRECTIONS E-REQUEST FOR PROPOSAL NUMBER 46700-GDC0000609

Global Tel*Link Corporation (“GTL”) hereby appeals and protests the State of Georgia Department of Correction’s (“GDC’s” or the “Department’s”) intended Contract Award for Inmate Telephone Services (“ITS”) under e-Request for Proposal No. 46700-GDC0000609 (the “RFP”) to TelMate, LLC (“TelMate”) as well as GDC’s evaluation of GTL’s proposal for the ITS contract.

INTRODUCTION

This procurement suffered from numerous significant and material errors committed by TelMate and Securus that were overlooked or ignored during the review process. The errors demand a rescission of the Notice of Intent to Award (“NOIA”), a striking of TelMate’s and Securus’s bids, and an award of the contract to GTL. Specifically, TelMate is woefully unqualified to meet the requirements set forth in the RFP’s mandatory questions about experience with systems of Georgia’s size and scope. For example, when claiming to having worked with systems like Georgia’s, which has 65 facilities and over 60,000 inmates, TelMate cited its work with the significantly smaller Montana Department of Corrections (2 state prisons and 1,717 inmates), a county jail in Oklahoma (1,994 inmates), and the Oregon Department of Corrections, which has 14 facilities and just over 14,000 inmates. TelMate’s inexperience is further demonstrated by its cost proposal, which is based on unrealistic projected growth in call volume of **300%** over the term of the contract.

Finally, both TelMate and Securus submitted misleading and non-responsive bids based on unrealistic and irresponsible projections, conditional cost proposals and attempts to hide prohibited fees. TelMate included prohibited fees. For its part, Securus’ bid offered conditional pricing and nebulous definitions of gross revenue (subject to the commission structure), and it also failed to affirm that it would assess commissions on interstate calls as required by the RFP. The procurement process should have discovered these errors initially or, at the very least, before allowing TelMate and Securus to make oral presentations.

In contrast to the unsound or optional bids of TelMate or Securus, GTL’s bid is the most responsive and reasonable for GDC, which is the fifth largest prison system in

the U.S. with an average daily population over 60,000 inmates. GTL is the incumbent contractor, and it has serviced the ITS contract for approximately 13 years. It is an industry leader with a presence in 29 states, including 12 of the top 20 Department of Corrections across the country. This experience, particularly with the GDC, has provided GTL perspective and understanding of the market superior to that of either TelMate or Securus. And, that unique perspective was made evident by the incredibly unrealistic and unreliable bid submitted by TelMate, which presumed over 300% growth in revenue at the same time that Governor Deal has made reducing Georgia's prison population and recidivism a top priority of his administration.

The errors present in this procurement taint the entire process and warrant an award to GTL or a rebidding of the project.

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INTERESTED PARTY:

GTL is an offeror under the RFP and submitted a timely proposal. GDC has selected TelMate as the intended awardee pursuant to a Notice of Intent to Award (“NOIA”). GTL is an actual offeror whose direct economic interest has been affected by GDC’s actions addressed herein. Consequently, GTL is an aggrieved supplier/interested party for purposes of this Protest, pursuant to the Georgia Procurement Manual (“GPM”) § 6.5.1.

TIMELINESS:

This appeal is timely because it is filed within the 10-day deadline established by Section 6.5 of the GPM for procurement protests, as well as a confirmatory email by the General Counsel of Department of Administrative Services (“DOAS”).

RELIEF REQUESTED:

1. Rescission of the NOIA pursuant to the GPM;
2. Re-evaluation of the scoring of the RFP;
3. Re-solicitation of the RFP;
4. Award the Contract to GTL; and
5. Such other and further relief as the DOAS Assistant Commissioner of Procurement deems appropriate.

DETAILED STATEMENT OF THE FACTUAL GROUNDS OF THE PROTEST

GTL provides the following detailed statement of the factual grounds of the appeal with citation to the appropriate documents.

RFP BACKGROUND

1. On August 1, 2012, GDC submitted a request to rebid the ITS to the Georgia Technology Authority, citing a need to update the current system.¹
2. Through a separate bid process, GDC entered into an agreement with Praeses, LLC (“Praeses”), whereby Praeses would provide management services for the ITS as well as consulting services for GDC’s rebid for the ITS at a maximum cost of \$379,845.35.²
3. On or around July 9, 2013, Praeses recommended to the GDC that the Department should seek a “Comprehensive Commission Approach” with “[a]ggressive commissions” targeting 68% to 72% in commissions for GDC with a commission guarantee which would provide “[m]onthly recurring revenue” and would allow for budgeting.³ This is an 8-12% increase from the current contract.
4. On July 16, 2013, DOAS posted the RFP onto Team Georgia Marketplace for offerors.⁴

¹ Georgia Technology Authority, Initial Investment Data Inmate Telephone System – Rebid, dated Aug. 1, 2012, attached as **Exhibit 1**.

² State of Georgia, State Entity Standard Contract Form between Georgia Department of Corrections and Praeses, LLC, dated April 14, 2014, attached as **Exhibit 2**. *See also*, Attachment L, ITS Consultant Scope of Services, dated Jan. 2, 2013, attached as **Exhibit 3**; State of Georgia State Entity Standard Contract Form for Inmate Telephone System Consulting Services between Georgia Dep’t of Corrections and Praeses, LLC dated April 4, 2014, attached as **Exhibit 4**.

³ Power Point Presentation, Georgia Department of Corrections, Inmate Telephone System: RFP and Future Enhancements, dated July 9, 2013, attached as **Exhibit 5**.

⁴ Georgia Department of Corrections, Electronic Request for Proposals for Inmate Telephone Service, eRFP No. # 46700-GDC0000609 posted July 16, 2013, along with subsequent amendments and attachments to the RFP, attached as **Exhibit 6**.

5. GTL was a qualified offeror, and it submitted a timely proposal for the RFP.⁵
As required under the RFP, GTL's proposal included both technical and cost information.
6. TelMate, Securus and others submitted bids to DOAS.⁶
7. On September 26, 2013, the FCC released an order on interstate inmate calling services rates.⁷ Based on the uncertainty caused by the FCC Order at that time, GDC halted the RFP bid process.⁸
8. On October 10, 2013, GDC decided to move forward with the RFP⁹, and on October 21, 2013, it requested alternate proposals based on the FCC Order through its initial Request for Clarification to each offeror.¹⁰
9. GTL was in second place after the Department validated the technical scoring mid-December 2013.¹¹

⁵ GTL, Response to RFP #46700-GDC0000609, filed Sept. 18, 2013 (redacted). A true and accurate copy is attached as **Exhibit 7**.

⁶ TelMate, Response to RFP #46700-GDC0000609, filed Sept. 18, 2013 (Redacted), attached as **Exhibit 8**. Securus Technologies, Response to RFP #46700-GDC0000609, filed Sept. 18, 2013 (Redacted), attached as **Exhibit 9**.

⁷ Email from J. Pytelewski re: GDC RFP for Inmate Telephone Service/Impact of Release of FCC Final Order dated Sept. 27, 2013, attached as **Exhibit 10**. Report and Order and Further Notice of Proposed Rulemaking, *In the Matter of Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, FCC 13-113 (Sept. 26, 2013), attached as **Exhibit 11**.

⁸ Ex. 10.

⁹ Email from J. Pytelewski to J. Pytelewski re: GDC RFP for Inmate Telephone Service Status Update dated Oct. 10, 2013, attached as **Exhibit 12**.

¹⁰ Email from J. Pytelewski to R. Gibson and mbrowning@gtl.net re: GDC Inmate Telephone Service RFP (#46700-GDC0000609) Request for Clarification dated Oct. 21, 2013, attached as **Exhibit 13**. Request for Clarification for Solicitation No. 46700-GDC0000609 to Telmate, LLC dated October 21, 2013, attached as **Exhibit 14**. Request for Clarification for Solicitation No. 46700-GDC0000609 to Securus Technologies dated October 21, 2013, attached as **Exhibit 15**.

¹¹ Email from J. Pytelewski to B. King re: ITS Re-Eval dated Feb. 4, 2014, attached as **Exhibit 16**.

10. After several rounds of Requests for Clarification sent by GDC to the offerors, on January 6, 2014, GDC entered into the negotiations round with GTL, TelMate and Securus.¹² During the negotiations process, each offeror presented oral presentations to the Department.¹³
11. GTL conducted its oral presentation on January 14, 2014,¹⁴ and it provided supplemental information on January 22, 2014.¹⁵
12. On February 24, 2014, GTL, TelMate and Securus submitted their Best and Final Offers (“BAFOs”).¹⁶
13. On March 5, 2013, GDC issued its final Requests for Clarification regarding the February 24, 2014 BAFOs to which each finalist timely responded.¹⁷

¹² Email from J. Pytelewski to Don.Eades@gtl.net, mbrowning@gtl.net re: RFP #46700-GDC0000609 – Status Notification dated Jan. 6, 2014, attached as **Exhibit 17**. Email from J. Pytelewski to proposals@telmate.com re: RFP #46700-GDC0000609 – Status Notification dated Jan. 6, 2014, attached as **Exhibit 18**. Email from J. Pytelewski to K. Eismann re: RFP #46700-GDC0000609 – Status Notification dated Jan. 6, 2014, attached as **Exhibit 19**.

¹³ Id.

¹⁴ Email from D. Eades to J. Pytelewski re: RFP #46700-GDC0000609 – Oral Presentation Agenda dated Jan. 9, 2014, attached as **Exhibit 20**. Email from J. Pytelewski to Don.Eades@gtl.net re: RFP #46700-GDC0000609 – Oral Presentation Agenda dated Jan. 9, 2014, attached as **Exhibit 21**.

¹⁵ Email from R. Gibson to J. Pytelewski re: GTL’s Supplemental Document for Georgia RFP #46700-GDC0000609 dated Jan 22, 2014, attached as **Exhibit 22**.

¹⁶ Letter from R. Pickens to J. Pytelewski re: Solicitation #46700-GDC0000609 Request for Cost Negotiations – Best and Final Offer dated Feb. 24, 2014, attached as **Exhibit 23**. GTL Final Cost Proposal, Request for Cost Negotiations (Best and Final Offer) dated Feb. 24, 2014, attached as **Exhibit 24**. TelMate Final Cost Proposal, Request for Cost Negotiations (Best and Final Offer) dated Feb. 24, 2014, attached as **Exhibit 25**.

¹⁷ Email from G. Woodruff to J. Pytelewski re: BAFO Cost Proposal Clarifications dated March 10, 2014, attached as **Exhibit 26**. Securus Technologies, Response to Request for Clarification Solicitation No. 46700-GDC0000609 dated March 12, 2014, attached as **Exhibit 27**. GTL, Response to Request for Clarification Solicitation No. 46700-GDC0000609 dated March 12, 2014, attached as **Exhibit 28**.

14. On April 22, 2014, GDC accepted TelMate's final proposal and February 24, 2014 BAFO,¹⁸ and on May 1, 2014, DOAS posted the NOIA.¹⁹

TELMATE IS AN UNQUALIFIED OFFEROR

15. The RFP requires that GDC must be "assured that the selected supplier has all of the resources to successfully perform under the contract," including past experiences in "similar endeavors."²⁰

16. Throughout the bid process, GDC made clear that there were certain mandatory requirements of responsive offerors.²¹ Specifically, the offeror must "currently be doing business with a state Department of Corrections" and "be capable of providing inmate telephone service to a customer with a similar scope as GDC's with 65 facilities that house over 60,000 inmates and have the capability to process over 180,000 calls and over 2,000,000 total minutes per month."²²

17. GDC continually emphasized the importance of this prior experience.²³

¹⁸ Letter from J. Pytelewski to K. O'Neil re: Event ID # 46700-GDC0000609, INMATE TELEPHONE SERVICE – AWARD OF CONTRACT dated April 22, 2014, attached as **Exhibit 29**.

¹⁹ Notice of Intent to Award, Inmate Telephone Service, Solicitation No. 46700-GDC0000609 dated May 1, 2014, attached as **Exhibit 30**.

²⁰ Ex. 6 at Attachment A.2.1.5.

²¹ *Id.* at Attachment A; email from J. Pytelewski to M. Ehringer re: Inmate Telephone Service Email 1 of 2 dated July 18, 2013, attached as **Exhibit 31**.

²² Ex. 6 at Attachment F.M1 and F.M2; Ex. 31.

²³ Email from J. Pytelewski to M. Ehringer re: Inmate Telephone Service Email 1 of 2 dated July 29, 2013, attached as **Exhibit 32**.

18. GDC also required three (3) customer references where the offeror “provides the equipment and services...comparable in scope as requested by the GDC.”²⁴
19. TelMate’s references include (1) the Oklahoma County, Oklahoma Jail with an average daily population of 1,994; (2) the Montana Department of Corrections with two state prisons and an average daily population of 1,717; and (3) its home state of Oregon’s Department of Corrections, which has fourteen correctional facilities and an average daily population of approximately 14,000.²⁵ Combined, these systems constitute less than half (45%) of Georgia’s inmate population.
20. TelMate’s website claims its largest customer oversees only 18,000 inmates.²⁶
21. Despite this inexperience with systems operating at the scale and scope of the GDC, TelMate was scored as satisfying the mandatory requirements, and its proposal was erroneously deemed complete.²⁷

**TELMATE SUBMITTED AN UNREASONABLE
AND UNREALISTIC PROPOSAL**

22. Under the GPM, GDC must award the contract to an offeror “who is clearly capable of performing the resulting contract” and not necessarily to the supplier who submitted the most favorable cost proposal.²⁸

²⁴ Ex. 6 at Attachment G.

²⁵ Ex. 8 at Additional Scored Responses, pp. 4-13.

²⁶ TelMate, About Us, <http://www.telmate.com/about-us/> (last accessed May 12, 2014), attached as **Exhibit 33**.

²⁷ Administrative Review Worksheet dated Oct. 17, 2013, attached as **Exhibit 34**.

²⁸ GPM § 5.6.3.1.

23. TelMate's inexperience and lack of the qualifications necessary to manage and service the ITS resulted in an unreasonable bid with projections that are impossible to perform.
24. In the RFP, GDC provided Inmate Telephone Monthly Statistics. The report provided the number of calls per facility over the previous six (6) months.²⁹ The RFP also explained that GDC's facilities process approximately 180,000 phone calls per month – resulting in approximately 3 phone calls per inmate per month.³⁰
25. GDC requested that offerors provide call data from their existing customers, but TelMate failed to do so.³¹
26. In its response, **TelMate assumed an increase in monthly call volume of 300%** - or 12 phone calls per inmate per month.³²
27. This unrealistic presumption warranted a Request for Clarification from GDC to TelMate on March 5, 2014. The Request sought "Contractor's BAFO Call volume assumptions/use of GDC calling statistics as provided in the above referenced RFP."³³

²⁹ Ex. 6 at Attachment P, Sec. 3.1.

³⁰ Id. at Attachment F.

³¹ Ex. 6 at Attachment G, Sec. 1.4; Ex. 8 at Additional Scored Responses, pp. 4-13. GTL also did not provide the number of monthly calls for its references. However, the inmate population of GTL's customers is substantially similar to Georgia's inmate population, and GTL provided a realistic estimate on the number of inmate calls, in contrast to TelMate's increase of monthly phone calls by 300%.

³² Ex. 26.

³³ Id.

28. TelMate responded five days later and acknowledged that its wild assumption relied on nothing more than its current dissimilar customers' call volume.³⁴

But, TelMate never provided data regarding those call volumes.³⁵

29. Despite this completely unreasonable projected increase in call volume, neither GDC nor its consultant, Praeses, further questioned TelMate's assumptions.

30. As explained in the Affidavit of Ron Gibson of GTL, revenue and call patterns at the county level are drastically difference than revenue and call patterns in the GDC system.³⁶

31. Inmates in county facilities often have close to 24 hours/day of telephone access, in contrast with the limited access in the GDC system, which restricts access to 13.2 hours per day on average and imposes a restrictive call allow list.³⁷

32. Due to the unlimited access in county facilities, an inmate's individual call volume may be as high as 2-3 calls per day, whereas inmates in the GDC system typically only make 2 to 3 calls per month.³⁸

³⁴ Id.

³⁵ Id.; Ex. 8 at Additional Scored Responses, pp. 4-13.

³⁶ Affidavit of Ron Gibson is attached as **Exhibit 35**.

³⁷ Id. at ¶¶ 3-5.

³⁸ Id. at ¶¶ 3-4.

TELMATE’S PROPOSAL MATERIALLY DEVIATED FROM THE RFP

33. TelMate was also less than forthcoming regarding hidden fees in its initial proposal despite the Georgia Procurement Manual’s direction that any exceptions must be set forth clearly in an proposal.³⁹

34. In response to sections J.1.20 and J.4.7 of the RFP, TelMate indicated that it would comply with GDC’s requirements to avoid fees beyond the specific schedule set forth in the RFP. Its response nevertheless included excess fees and failed to explain or clearly set forth those exceptions to the RFP.⁴⁰

35. GDC recognized TelMate’s errors, but it did not strike TelMate’s proposal as required by Section 4.5.3 of the Georgia Purchasing Manual: “Exception to a solicitation which give a supplier a competitive advantage or which cause the supplier to fail to meet a mandatory requirement cannot be accepted.”⁴¹

36. Instead of complying with the Georgia Purchasing Manual, GDC allowed TelMate to forego the fees, which TelMate claimed would not impact its already unrealistic and irresponsible cost proposal.⁴²

³⁹ GPM § 4.5.3.

⁴⁰ Ex. 8 at Attachment J; Additional Responses at pp. 4-13.

⁴¹ GPM § 4.5.3(emphasis added.); Ex. 6 at Attachment P.2; Email from J. Pytelewski to proposals@telmate.com re: GDC Request for Clarification #03 dated Jan. 2, 2014, attached as **Exhibit 36**; December 19th Validation Meeting Notes, attached as **Exhibit 37**.

⁴² Email from G. Woodruff to J. Pytelewski re: GDC Request for Clarification #03 dated Jan. 8, 2014, attached as **Exhibit 38**.

**SECURUS SUBMITTED A CONDITIONAL
BID CONTRARY TO THE TERMS OF THE RFP**

37. Pursuant to the GPM, GDC may only consider *firm, unconditional* pricing unless there are no firm price responses.⁴³
38. The cost proposals were based, in significant part, on revenues derived from commissions on outgoing calls, including interstate phone calls.⁴⁴
39. Securus has consistently withheld commissions on interstate phone calls from its clients.⁴⁵
40. Throughout the bid process, Securus continually noted that it would comply with GDC's definition of "Gross Revenues," which would require the successful offeror to pay GDC commissions on, among other things, all "charges generated by the completion of all calls (including any combination of free, collect, debit, and pre-paid local, Intralata/Intrastate, Intralata/Interstate, Interlata/Intrastate, Interlata/Interstate and International Calls)..."⁴⁶
41. Securus's proposal failed to comply with this representation. While Securus was either unclear or had cause for concern regarding the treatment of interstate calls based on the FCC's order, Securus failed to raise this concern with GDC or indicate it would not include interstate phone calls in its commission calculations. Instead, Securus represented that it would comply

⁴³ GPM § 5.6.6.1.

⁴⁴ Ex. 6 at Attachment O.1.1.

⁴⁵ Letter from R. Pickens to J. Pytelewski re: Solicitation # 46700-GDC0000609 Inmate Telephone Service – Request for Clarification dated Nov. 6, 2013, attached as **Exhibit 39**.

⁴⁶ Ex. 6 at Attachment O.1.1; Ex. 9 at Attachment O.1.1.

- with the “Alternate Future Calling Rates” based on GDC’s interpretation of the FCC Order.⁴⁷
42. Securus did not disclose that its definition of gross revenue excluded interstate calls. GDC recognized the issue, and in its March 5, 2014 Request for Clarification, GDC explicitly asked for confirmation that the final commission percentage rate calculation complied with GDC’s definition of gross revenue (as set forth in Attachment O of the RFP).⁴⁸
43. Securus responded not by answering the question, but instead by offering another conditional cost structure that incorporated a mutual adjustment mechanism to the Monthly Minimum Guarantee (“MMG”), which would allow Securus to adjust the MMG based on actual contract performance contrary to the explicit terms of the RFP.⁴⁹
44. GDC recognized that Securus had submitted a conditional bid in response to the RFP.⁵⁰
45. Based on the conditional aspect of Securus’s bid, GDC requested that Securus remove these stipulations.⁵¹

⁴⁷ Ex. 39; Ex. 12.

⁴⁸ Ex. 27.

⁴⁹ Id.

⁵⁰ Email from S. Poitevint to L. Helgesen, T. Sexton, C. Smith, M. Williams, J. Pytelewski re: BAFO Clarification Evaluation dated March 11, 2014, attached as **Exhibit 40**; email from J. Pytelewski to S. Poitevint, T. Sexton, C. Smith, M. Williams, A. O’Boyle, L. Helgesen, and S. Lakatos re: Securus BAFO Clarification dated March 12, 2014, attached as **Exhibit 41**.

⁵¹ Letter from J. Pytelewski to K. Eismann re: RFP # 46700GDC0000609 (Inmate Telephone Service) Best and Final Offer (BAFO) Cost Proposal Clarifications Submitted March 12, 2014 dated March 19, 2014, attached as **Exhibit 42**.

46. Securus’s response was murky at best, and it is unclear if Securus intended to remove the conditional aspects to its bid, noting it would “withdraw/remove the referenced Items 1, 2 and 3” from its clarification response. [Doc. No. 468.] Because Securus never included interstate calls as part of gross revenue, withdrawing the clarifications did not reinstate anything; interstate calls remained exempt from Securus’s definition of gross revenue.

ADDITIONAL SCORING ERRORS

47. Based on review of the technical evaluations, it appears that several scoring errors were made throughout the process.
48. In the initial phase, GTL’s true technical scores by each individual evaluator were not properly converted to the Master Technical Evaluation spreadsheet.
49. Initially, GTL was assigned an average score of 331.25. Its actual average, however, was 332.65.⁵²
50. Additionally, GTL’s technical score continued to fall throughout the process while the other finalists’ scores continued to increase after each round – TelMate by a total of 19 points, and Securus by a total of 9 points.⁵³
51. GDC provides no explanation for these changes, and given the errors at the initial stages, it is likely that these errors continued to the detriment of GTL.

⁵² Compare Compilation of GTL Technical Evaluations, attached as **Exhibit 43**, with Evaluation Summary – Initial Scoring, RFP # 46700-GDC0000609, Issuing Officer J. Pytelewski, attached as **Exhibit 44**.

⁵³ Compare Ex. 44; Evaluation Summary RFP # 46700-GDC0000609, Issuing Officer J. Pytelewski (Validated Scores), attached as **Exhibit 45**; and Evaluation Summary RFP # 46700-GDC0000609, Issuing Officer J. Pytelewski (Revalidated/Rescoring by team/Cost reflects Post-Presentation Supplemental Proposals), attached as **Exhibit 46**.

DOAS FAILED TO PRODUCE ALL DOCUMENTS REQUESTED BY GTL

52. On May 2, 2014, the day after the NOIA was posted, GTL's counsel submitted an Open Records Request and a request pursuant to the State Purchasing Act for all documents, including communications, regarding the RFP.⁵⁴
53. On May 5, 2014, DOAS produced a CD and claimed it had produced all documents in its possession pertaining to the RFP, including emails from Praeses.⁵⁵
54. Upon inspection, however, it appears that several emails and their attachments were not included.⁵⁶
55. There is also a substantial gap in time in the documents produced. In March 26, 2014, GTL emailed the issuing officer requesting a status update on the timeline for the NOIA issuance. The next email produced is dated April 1, 2014, which already indicates that GDC decided to award the contract to Telmate and references "outstanding items to cover with Telmate," indicating other issues with TelMate concerning the contract award were previously discussed.⁵⁷

⁵⁴ Letter from J. Belinfante to S. Johnson re: Request for Agency Records Related to Solicitation No. 46700-GDC0000609 (the "Solicitation") dated May 2, 2014, attached as **Exhibit 47**; Letter from J. Belinfante to S. Johnson re: Request for Agency Records Related to Solicitation No. 46700-GDC0000609 (the "Solicitation") dated May 2, 2014 (Supplemental Request), attached as **Exhibit 48**.

⁵⁵ Email from Management, Records to K. McCuiston re: Open Records Request – Solicitation No. 46700-GDC0000609 dated May 7, 2014, attached as **Exhibit 49**.

⁵⁶ See, e.g., email from S. Poitevint to L. Helgesen re: Calling Rate Options dated Oct. 15, 2013 (original email from Lisa Helgesen to Poitevint and Sexton dated Oct. 9, 2013 and its attachment referenced in subsequent communications but not included in production), attached as **Exhibit 50**.

⁵⁷ Email from S. Poitevint to L. Helgesen re: RFP-Contractual Specifications dated April 1, 2014, attached as **Exhibit 51**.

56. At the very least, DOAS should allow for additional time before awarding the ITS contract so that unsuccessful offerors can fully review the documents pertaining to the RFP as required under the State Purchasing Act.

GROUND OF PROTEST

Several substantive errors plagued this procurement, as TelMate was permitted to advance well beyond the appropriate end for a non-responsive and non-responsible offeror. Securus does not benefit from these errors, as it offered an equally flawed proposal that contained conditional pricing. Each violation described below -- (1) TelMate being deemed responsive despite its total inexperience with a customer of the size and scope of GDC; (2) Telmate's wildly irresponsible and unrealistic presumptions leading to a materially flawed cost proposal; (3) TelMate's inclusion and then attempted hiding of certain fees prohibited by the RFP; (4) Securus's conditional pricing; (5) erratic and erroneous scoring; and (6) the existence of documents that have not been produced -- would warrant relief. The collective weight of the errors, however, sink the process to depths from which it cannot recover.

I. TelMate Is Not A Qualified Offeror.

Given the size of Georgia's inmate population, GDC and DOAS correctly emphasized the importance of an offeror's experience with a large-scale corrections system. The RFP, therefore, included mandatory questions to test the whether the supplier is responsible and whether the proposal is responsive; in other words, the review process should examine the "supplier as well as the supplier's submitted response."⁵⁸ "A supplier must be both responsive and responsible to be eligible for

⁵⁸ GPM § 5.6.2.

further consideration.”⁵⁹ A responsive bid “materially conforms to the requirements and specifications of the solicitation ... A *material deviation* will be cause for rejection.”⁶⁰ Similarly, a responsible supplier must demonstrate the “appropriate financial, organizational and operational capacity and controls ... to be eligible for status as a qualified contractor.”⁶¹ A federal court has described the “responsible bidder” test as a broad one that “is not solely a question of financial ability to perform the work. Decisions in Louisiana and other states allow an awarding body to consider skill, integrity, judgment, experience, reputation, previous conduct on contracts, and other factors.”⁶² DOAS must evaluate and enforce these questions; failure to do so would constitute an abuse of discretion for ignoring competitive bidding requirements.⁶³

Under this framework, the RFP included two mandatory questions that addressed the issue of similar experience. The first mandatory question in the RFP required the contractor to be currently doing business with a “State Department of Corrections customer and providing inmate telephone service to state prisons **or similar correctional facilities** for a minimum of five years.”⁶⁴ The next mandatory question in the RFP demanded that the contractor “be capable of providing inmate telephone service to a customer **with a similar scope as GDC’s with 65 facilities**

⁵⁹ GPM § 5.6.2.

⁶⁰ GPM § 5.6.2.1.

⁶¹ GPM § 5.6.2.2.

⁶² *Housing Auth. of Opelousas, La. v. Pittman Const. Co.*, 264 F.2d 695, 698 (5th Cir. 1959) (considering Am. Jur., Public Works & Contracts, Sec. 42 (1942)).

⁶³ See *Pataula Elec. Memb. Corp. v. Whitworth*, 951 F.2d 1238, 1243 (11th Cir. 1992) (involving a previous GDC procurement).

⁶⁴ Ex.6 at Attachment F.M1.

that house over 60,000 inmates.⁶⁵ Because these questions are mandatory, an offeror had to answer each question affirmatively to even be eligible for a substantive review. TelMate was erroneously considered to have satisfied both of these requirements.⁶⁶

Though TelMate affirmatively answered each question, the facts belie these representations. TelMate has no customers that come even close to the size and scope of the GDC with its 60,000 inmates and 65 facilities. Specifically, the Oregon Department of Corrections oversees 14 facilities and “14,000+” inmates.⁶⁷ As shown in *Table 1*, review of the publicly available Oregon Department of Corrections data reveals that 64%, or 9 of its 14 facilities, have fewer than 1,000 inmates. Only two facilities have more than 2,000 inmates.

*Table 1*⁶⁸

<u>Oregon DOC Facility</u>	<u>Inmate Count</u>	<u>Date of Inmate Count</u>
Snake River Correctional Institution	2,940	December-12
Oregon State Penitentiary	2,094	January-14
Two Rivers Correctional Institution	1,725	March-10
Coffee Creek Correctional Facility	1,642	February-13
Eastern Oregon Correctional Institution	1,609	February-13
Oregon State Correctional Institution	873	March-10
Deer Ridge Correctional Institution	754	March-11
Columbia River Correctional Institution	562	October-09
Warner Creek Correctional Facility	489	June-13

⁶⁵ *Id.* at Attachment F.M2.

⁶⁶ Ex. 34.

⁶⁷ See <http://www.oregon.gov/DOC/OPS/pages/index.aspx>

⁶⁸ Data is compiled by publicly available information from the Oregon Department of Corrections website, attached as **Exhibit 52**.

Sanitam Correctional Institution	431	March-10
Powder River Correctional Facility	358	January-14
Shutter Creek Correctional Institution	286	October-12
Mill Creek Correctional Facility	283	January-14 ⁶⁹
South Fork Forest Camp	198	October-09

These numbers are simply not comparable to the GDC.

The other comparators are even less compelling. The single county jail in Oklahoma County houses 1,994 inmates. And, the entire Montana Department of Corrections oversees 1,717 inmates between only two facilities.⁷⁰ **Many of GDC's 65 facilities house more inmates than the entire Montana system; several have more than the Oklahoma County facility; and others come close** including:

- (1) Wheeler Correctional Facility in Alamo (2,686);
- (2) Coffee Correctional Facility in Nicholls (2,605);
- (3) The Georgia Diagnostic and Classification Prison in Jackson (2,197);
- (4) Wilcox State Prison in Abbeville (1,853);
- (5) Macon State Prison in Oglethorpe (1,723);
- (6) Autry State Prison, in Pelham (1,681);
- (7) Calhoun State Prison in Morgan (1,650);
- (8) Coastal State Prison in Garden City (1,650);
- (9) Johnson State Prison in Wrightsville (1,575);
- (10) Smith State Prison in Glennville (1,556);
- (11) Georgia State Prison in Reidsville (1,501);

⁶⁹ Mill Creek Correctional Facility is part of the Sanitam Correctional Institution.

⁷⁰ Ex. 8 at Additional Scored Responses. See also, www.cor.mt.gov/content/Resources/Reports/daily.pdf (last accessed May 12, 2014), attached as **Exhibit 53**. Montana only has two state prisons – one for men and one for women. Other facilities are youth detention centers, prerelease centers or day programs.

- (12) Ware State Prison in Waycross (1,497);
- (13) Riverbend Correctional Facility in Milledgeville (1,478);
- (14) Rogers State Prison in Reidsville (1,459);
- (15) Valdosta State Prison and Annex (1,392);
- (16) Washington State Prison in Davisboro (1,328);
- (17) Hays State Prison in Trion (1,277);
- (18) Hancock State Prison in Sparta (1,242);
- (19) Arrendale State Prison in Alto (1,295);
- (20) Telfaire State Prison in Helena (1,236);
- (21) Augusta State Medical Prison in Grovetown, Georgia (1,227);
- (22) Dodge State Prison in Chester (1,219); and
- (23) Pulaski State Prison in Hawkinsville (1,200).⁷¹

Thus, in no way could TelMate’s proposal have reasonably been deemed compliant with the RFP’s demand that an offeror have similar experience. There is evidence of only two “similar correctional facilities,” and TelMate has zero customers of a “similar scope as GDC’s,” as required by M1 and M2 of the mandatory questions in Attachment F of the RFP. The Department’s decision to deem the proposal responsive, therefore, constitutes an abuse of discretion that warrants striking TelMate’s bid in its entirety.

That TelMate was considered a responsible supplier for a procurement of this magnitude was also an erroneous decision that cannot be reconciled with the facts before the reviewing officer. Had this procurement been for a large county jail system,

⁷¹ Ex.6 at Attachment B.1.1.

TelMate may have been a responsive and responsible bidder. For this contract, TelMate was neither.

II. TelMate's Inexperience Led to An Unreasonable Bid.

The proposed award to TelMate is based on cost terms that are unrealistic and will likely fail or require significant post-execution revisions with the GDC. Put simply, TelMate based its cost proposal on anticipated call volume that is radically different (four times greater) from what GDC proposed as a baseline and is, therefore, unsupportable. TelMate's naivety does not impact just it; because there are monthly minimum guarantees in the proposal, TelMate's unrealistic projections will fall back onto the GDC and ultimately Georgia taxpayers. For this reason, the proposal should be rejected as pure fantasy.

Specifically, the RFP included GDC's Inmate Telephone Monthly Statistics, which provided the number of calls per facility over the previous six (6) months, and explained that there are approximately 180,000 phone calls per month, or three (3) phone calls per inmate per month.⁷² TelMate's cost proposal presumes 12 calls per inmate per month, which represents a **300% increase** from the RFP's baseline. This is a material error, because the cost proposals were based on monies received from the minimum monthly guarantees ("MMGs"), which, in turn, are based on expected commissions imposed on each call.⁷³ Call volume, therefore, is a material and critical component of the cost structure. Betting big and wrong on call volume could be devastating to an awardee and result in a breached contract and/or emergency procurement. Consequently, in order to comply with DOAS's mission of providing "for increased

⁷² Ex. 6 at Attachment F; Attachment P.3.1.

⁷³ Ex. 5 at 5.

public confidence [and] safeguard[ing] the maintenance of a procurement system of quality and integrity”, the procurement should have been thoroughly vetted the cost proposals for reasonableness. It was not.

After TelMate submitted its proposal, GDC sent a Request for Clarification on March 5, 2014. The Request sought an explanation of “Contractor’s BAFO Call volume assumptions/use of GDC calling statistics as provided in the above referenced RFP.”⁷⁴ TelMate responded by revealing its wild assumption that monthly call volume would increase by 300% or 12 calls per inmate per month.⁷⁵ TelMate also confessed that this projection was based on its current customers’ call volumes, which largely consists of county facilities which have drastically different operations than GDC.⁷⁶ In fact, county facilities impose fewer security restrictions on inmates’ use of telephones to its inmates, who are held for shorter terms -- often awaiting trial or attempting to make bail.⁷⁷ Due to this less-restrictive environment and the general nature of county facilities, the individual call volume of an inmate within county facilities can be as high as 2-3 calls per day.⁷⁸ This is drastically different from the telephone system within GDC. GDC restricts inmates access to telephones, with an average access of 13.2 hours per day.⁷⁹ Additionally, GDC maintains strict call allow lists for each inmate, which can take

⁷⁴ Ex. 26.

⁷⁵ Id.

⁷⁶ Id.

⁷⁷ Ex. 35 at ¶ 3.

⁷⁸ Id.

⁷⁹ Id. at ¶ 4.

approximately 1 business week to implement for each inmate.⁸⁰ Due to these restrictions as well as the nature of the prison system generally, inmates in the GDC system typically make only 2 to 3 calls per month.⁸¹ The contrast in nature between county facilities and the GDC system demonstrates the complete lack of support for TelMate's projections. Worse yet, TelMate hid this information from DOAS during the procurement process, failing to disclose that information to GDC despite the RFP's instruction to do so. At best, TelMate's decision appears to be an attempt to hide baseless projections.⁸²

Beyond the likelihood of TelMate losing enormous amounts of money on this contract, GTL provides a much better value to the State. As demonstrated below, GTL can pay the State 86% of what TelMate is offering on 60% of the volume. The per-call benefit to the State therefore weighs strongly in favor of GTL and not TelMate, which only achieved a higher MMG by using wildly inflated and fantastical projections for increased call volume.

⁸⁰ Id. at ¶ 5.

⁸¹ Id. at ¶ 4.

⁸² Ex. 8 at Attachment G.1.4. Although GTL inadvertently omitted similar information, GTL did not rely on other states' experiences to achieve its estimate of five calls per inmate, per month.

Table 2

	TelMate	GTL	Difference
Annualized Monthly Minimum Guarantee (MMG)	\$8,700,000	\$7,500,000	(\$1,200,000) <i>or</i> 86% of TelMate's MMG
Commission Rate	82%	Year One: 82% Year Two: 77% Year Three: 72%	Year One: 0% Year Two: 5% Year Three: 10%
Calls per Inmate Per Month	12 (GDC predicts 3)	5 (GDC predicts 3)	60% call volume
Inmates Statewide	~60,000	~60,000	--
Benefit to the State per Call Based on MMG	\$0.83/call	Year One: \$1.70/call Year Two: \$1.60/call Year Three: \$1.50/call	Year One: \$0.87/call Year Two: \$0.77/call Year Three: \$0.67/call

Thus, not only does GTL's proposal provide more protection to the State in the case of reduced volumes, but it also provides GDC with a more realistic proposal. TelMate's proposal, which included numbers based on dissimilar comparisons from other states, is irresponsible and puts the GDC, taxpayers and state appropriators at significant risk of making up for massive deficits caused by unrealized call volumes.

III. TelMate's Proposal Included Unauthorized Fees That It Attempted to Hide from GDC and DOAS.

As shown above, TelMate's proposal should have been rejected as non-responsive and not responsible. It should have also been rejected for containing hidden fees that were likely and improperly included to support its unrealistic cost proposal. This is a dispositive error given the Georgia Purchasing Manual's clear requirement that any

exceptions to GDC's prohibition of certain fees be clearly set forth.⁸³ Worse yet, TelMate did not just hide the fees; it affirmatively represented to DOAS that its proposal lacked any type of hidden fees. Only later, and as a condition of continuing in the procurement process, did TelMate acknowledge the existence and inclusion of the improper fees and then agree not to charge them.

Section 4.5.3 of the Georgia Purchasing Manual provides that any exceptions to any portion of the solicitation "must be clearly noted in a separate section of the supplier's response and identified as 'Exceptions.'"⁸⁴ This designation is critical, because without an express designated exception, the State "will consider the supplier's response to meet all requirements."⁸⁵

Here, GDC expressly barred the inclusion of any fees outside of those provided in the RFP.⁸⁶ TelMate ignored this prohibition, though it represented its compliance with the requirement in its response to Sections J.1.20 and J.4.7 of the RFP.⁸⁷ The Department discovered the subterfuge at the December 19, 2013 validation meeting.⁸⁸ Specifically, the December 19 Validation Meeting Notes indicate questions concerning "whether [TelMate's] convenience fee violates RFP requirements that said no additional

⁸³ GPM § 4.5.3.

⁸⁴ GPM § 4.5.3.

⁸⁵ Id.

⁸⁶ Ex. 6 at Attachment P.2; see also, Offeror Questions & Answers, RFP Number 46700-GDC0000609 dated July 16, 2013, attached as **Exhibit 54**.

⁸⁷ Ex. 8 at Attachment J, Additional Scored Responses.

⁸⁸ Ex. 37.

fees should be included.”⁸⁹

The State then issued a clarification request to TelMate on January 2, 2014.⁹⁰ The clarification noted that, with regards to “Telmate’s response to at least two GDC requirements/questions (J1.20 and J4.7), additional charges, fees, etc. were identified/included.”⁹¹ Only once it was caught did TelMate respond that it would comply with the RFP and remove all additional fees, charges and penalties.⁹² Adding to the unreliable representations in the cost proposal, TelMate also stated that the exclusion of fees would not change its cost proposal.⁹³

TelMate’s improper submission contains at least three errors that provide bases for the relief GTL seeks. First, the proposal should have been deemed non-responsive pursuant to Section 4.5.3 of the Georgia Purchasing Manual: “Failure to note exceptions in the supplier’s response may be cause for rejection of the supplier’s response.” Second, the decision to hide fees speaks to the lack of responsibility of TelMate’s proposal. As shown above, the determination of whether a particular proposal or offeror is responsible is a broad inquiry. Third, the initial inclusion of certain fees and then denial of their impact on cost provides yet another fact demonstrating the unreasonableness and doubtful reliability of TelMate’s cost proposal. Any of these reasons would authorize DOAS to deem TelMate’s bid as non-responsive, but collectively, they demand striking the proposal in its entirety.

⁸⁹ Id. (emphasis added).

⁹⁰ Ex. 36.

⁹¹ Id.

⁹² Ex. 38.

⁹³ Id.

IV. Securus's Conditional Cost Proposal Should Have Been Rejected.

The striking of TelMate's proposal does not result in Securus being awarded the contract. Securus's proposal violated the Georgia Purchasing Manual's mandate that only "*firm, unconditional pricing*" be submitted when offerors like GDC offer no conditions on their cost proposals.⁹⁴ Alternatively, Securus's exclusion of interstate telephone calls from its definition of "gross revenue" (and therefore, commission structure) should have been rejected as non-responsive.

The RFP requires the inclusion of long distance phone calls in the definition of gross revenue for purposes of applying commissions.⁹⁵ This represented a change for Securus, which has consistently withheld commissions on interstate phone calls from its clients.⁹⁶ Despite this history, Securus represented to GDC that it would comply with the definition of "gross revenues," which included commission on all "charges generated by the completion of all calls (including any combination of free, collect, debit, and pre-paid local, Intralata/Intrastate, Intralata/Interstate, Interlata/Intrastate, Interlata/Interstate and International Calls)...."⁹⁷ Securus's BAFO excludes interstate phone calls from its definition of gross revenue.⁹⁸ This representation was patently false and warrants rejection of the proposal.

⁹⁴ GPM § 5.6.6.1 (emphasis in original).

⁹⁵ Ex. 6 at Attachment O.1.1.

⁹⁶ Ex. 27.

⁹⁷ Ex. 6 at Attachment O.1.1; Ex. 9.

⁹⁸ Ex. 27.

Securus's efforts at obscuring these facts led GDC to seek another Request for Clarification on March 5, 2014.⁹⁹ The Request sought express confirmation that commissions would be assessed on interstate phone calls.¹⁰⁰ Rather than providing a straight and forthright answer, Securus responded by offering a different conditional pricing proposal. This time, it requested incorporation of a mutual adjustment mechanism to the Monthly Minimum Guarantee ("MMG"), which would allow Securus to adjust the MMG based on actual contract performance.¹⁰¹ Evaluators correctly recognized that the MMG proposal "sounded conditional on a number of actions/assumptions being met" and contained "[i]nteresting wording."¹⁰²

GDC informed Securus that its conditional bid is unacceptable.¹⁰³ Securus's response, however, only repealed the second conditional offer and effectively returned Securus to its prior submission, which did not include interstate calls as part of the "gross revenue" to which commissions would apply.¹⁰⁴ Put simply, **no Securus proposal ever agreed to include interstate calls in the definition of "gross revenue" that would be subject to the commission structure.** Securus's proposal, therefore, should be stricken in its entirety for being (1) non-responsive to GDC's demand that interstate calls be subject to the commission agreement; (2)

⁹⁹ Email from J. Pytelewski to K. Eismann re: March 10th Conference Call and Request for Clarification dated March 5, 2014, attached as **Exhibit 55**.

¹⁰⁰ Id.

¹⁰¹ Ex. 27.

¹⁰² Exs. 40, 41.

¹⁰³ Ex. 42.

¹⁰⁴ Email from K. Eismann to J. Pytelewski re: Securus Response to March 19, 2014 Letter as Attached dated March 21, 2014, attached as **Exhibit 56**.

improperly conditioned upon the exclusion of interstate calls; or (3) anything but clear when attempting to sneak an exception through the proposal in violation of Section 4.5.3 of the Georgia Purchasing Manual.

V. Scoring Errors.

Even if TelMate's and Securus's deeply flawed bids somehow survive the scrutiny of this review, DOAS should, at the very least, rescore the top three proposals given apparent irregularities and miscalculations. First, GTL's true initial technical scores by each individual evaluator were not properly converted to the Master Technical Evaluation spreadsheet: while GTL was assigned an average score of 331.25, its actual average was 332.65.¹⁰⁵

Second, GTL's technical score inexplicitly declined throughout the process, while the other finalists' scores continued to increase after each round, despite the gamesmanship and non-responsiveness discussed above.¹⁰⁶ GDC provides no explanation for these changes, and given the errors at the initial stages, it is likely that these errors continued to the detriment of GTL.

Finally, the errors in TelMate's unreasonable cost proposal and Securus's opaque definition of what constitutes "gross revenue" warrant a proper rescoring with these factors considered. Put simply, too many issues with Securus's and TelMate's proposals were missed, and those errors will have a material impact on the cost proposals submitted by both offerors.

¹⁰⁵ Compare Ex. 43 with Ex. 44.

¹⁰⁶ TelMate by a total of 19 points, and Securus by a total of 9 points. (Ex. 46.)

VI. DOAS FAILED TO PRODUCE ALL DOCUMENTS REQUESTED BY GTL.

On May 2, 2014, the day after the NOIA was posted, GTL's counsel submitted an Open Records Request and a request pursuant to the State Purchasing Act for all documents, including communications, regarding the RFP.¹⁰⁷ On May 5, 2014, DOAS produced a CD and claimed it had produced all documents in its possession that pertain to the RFP, including those emails from Praeses.¹⁰⁸

Upon inspection, however, it appears that several emails and their attachments were not included.¹⁰⁹ There is also a substantial gap in time in between the documents produced. On March 26, 2014, GTL emailed the issuing officer requesting a status update on the timeline for the NOIA issuance. There is no evidence that GDC responded to this email, and the next email produced is dated April 1, 2014, which indicates that GDC already decided to award the contract to Telmate and "outstanding items to cover with Telmate," indicating other issues with TelMate concerning the contract award was previously discussed.¹¹⁰ Finally, despite being subject to the Georgia Open Records Act, Praeses has not responded to GTL's separate request,¹¹¹ and its response was due no later than Thursday, May 8, 2014. Consequently, GTL lacks a sufficient basis to

¹⁰⁷ Exs. 47, 48.

¹⁰⁸ Ex. 49.

¹⁰⁹ See, e.g., Ex. 12 (email from Lisa Helgesen to Poitevint and Sexton dated Oct. 9, 2013 and its attachment not included in the production).

¹¹⁰ Ex. 51.

¹¹¹ Letter from J. Belinfante to F. Auer re: Georgia Open Records Request for Records Related to Solicitation No. 46700-GDC0000609 (the "Solicitation") by the State of Georgia dated May 6, 2014, attached as **Exhibit 57**.

determine if additional documents provide even more reasons to rebid this procurement, and reserve the right to supplement its protest pursuant to GPM § 6.5.2.¹¹²

At the very least, DOAS should allow additional time before awarding the ITS contract so that unsuccessful offerors can fully review the documents pertaining to the RFP as required under the State Purchasing Act.

CONCLUSION

For the reasons stated above, the RFP must be canceled or awarded to GTL as the most responsive and responsible offeror.

RELIEF REQUESTED

1. Suspension of the RFP, Revocation of NOIA, and Suspension of Issuance of NOA: Pursuant to the State Purchasing Act, as implemented in the Georgia Procurement Manual, specifically GPM § 6.5.5, GTL seeks immediate suspension of the RFP pending final resolution of this Protest/Appeal, and no issuance of an NOA until this Appeal/Protest is resolved.
2. Rescind Award to TelMate: DOAS is authorized to rescind TelMate's award under the RFP and State Purchasing Act.
3. Revision of the RFP: DOAS must include all changes necessary to provide all offerors accurate and complete information prerequisite to the compilation of bids and an express and transparent evaluation procedure.
4. Award to GTL: GTL submitted what would have been the highest-scoring cost proposal had it been properly evaluated.
5. Re-solicitation of the RFP

¹¹² We expect the documents to be available as soon as Praeses complies with its obligations under the Georgia Open Records Act, but to date, Praeses has remained silent.

6. Impartial evaluation of bids

7. Such other and further relief as the DOAS Assistant Commissioner of Procurement deems appropriate.

This 12th day of May, 2014.

/s/ Kimberly K. Anderson

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Kimberly K. Anderson

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SIGNATURE OF GTL OFFICER

Pursuant to GPM § 6.5.3, I hereby certify that I am authorized to sign contracts on behalf of GTL.

This 12th day of May, 2014.



Jeffrey B. Haidinger
President/COO

CERTIFICATE OF SERVICE

On this date, the undersigned certifies that a copy of this Protest and Appeal, together with all attachments, is being furnished via email to:

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This 12th day of May, 2014.

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