

STATE OF FLORIDA  
DEPARTMENT OF CORRECTIONS

GLOBAL TEL LINK CORPORATION, A  
DELAWARE CORPORATION,

Petitioner,

and

SECURUS TECHNOLOGIES, INC.,

Intervenor,

vs.

FDOC CASE NO. 13-81  
DOAH CASE NO. 13-3028BID

DEPARTMENT OF CORRECTIONS,

Respondent,

and

EMBARQ PAYPHONE SERVICES, INC.  
d/b/a CENTURYLINK,

Intervenor. /

EMBARQ PAYPHONE SERVICES, INC.  
d/b/a CENTURYLINK,

Petitioner,

and

GLOBAL TEL LINK CORPORATION, A  
DELAWARE CORPORATION,

Intervenor,

vs.

FDOC CASE NO. 13-87  
DOAH CASE NO. 13-3029BID

DEPARTMENT OF CORRECTIONS,

Respondent,

and

SECURUS TECHNOLOGIES, INC.,

Intervenor. /

SECURUS TECHNOLOGIES, INC.,

Petitioner,

FDOC CASE NO. 13-82  
DOAH CASE NO. 13-3030BID

and

GLOBAL TEL LINK CORPORATION, A  
DELAWARE CORPORATION,

Intervenor,

vs.

DEPARTMENT OF CORRECTIONS,

Respondent,

and

EMBARQ PAYPHONE SERVICES, INC.  
d/b/a CENTURYLINK,

Intervenor. /

GLOBAL TEL LINK CORPORATION, A  
DELAWARE CORPORATION,

Petitioner,

and

SECURUS TECHNOLOGIES, INC.,

Intervenor,

FDOC CASE NO. 13-93  
DOAH CASE NO. 13-3041BID

and

EMBARQ PAYPHONE SERVICES, INC.  
d/b/a CENTURYLINK,

Intervenor,

vs.

DEPARTMENT OF CORRECTIONS,

Respondent. /

## FINAL ORDER

This matter comes before the State of Florida Department of Corrections (“Department”), pursuant to Section 120.57(3), Florida Statutes, for consideration and final agency action after an administrative hearing conducted before F. Scott Boyd, Administrative Law Judge (“ALJ”), of the Division of Administrative Hearings (“DOAH”) in response to a challenge to an award for the Department’s Invitation to Negotiate #12-DC-8396 (“ITN”) as well as the Department’s eventual decision to reject all replies to the ITN.

Accordingly, the ALJ framed the issues in the case as follows: “Whether the Florida Department of Corrections’ agency action to withdraw its Intent to Award and to reject all replies to Invitation to Negotiate #12-DC-8396 is illegal, arbitrary, dishonest, or fraudulent, and if so, whether the Department’s Intent to Award was clearly erroneous, contrary to competition, arbitrary, or capricious.”

A hearing was conducted on September 11, 12, and 18, 2013. Thereafter, following submissions of Proposed Recommended Orders by all parties, a Recommended Order was entered into by the ALJ on November 1, 2013. The Petitioners/Intervenors, Embarq Payphone Services, Inc. (“Embarq”) and Securus Technologies, Inc. (“Securus”), and the Respondent, the Department of Corrections, filed exceptions to the Recommended Order on November 12, 2013. Petitioner/Intervenor Global Tel Link (“GTL”) did not file any exceptions to the Recommended Order. On November 22, 2013, Embarq filed a written response to Securus’s exceptions to the Recommended Order.

After reviewing this matter and being fully advised in the premises, it is Ordered that:

1. Pursuant to Section 120.57(1)(l), Florida Statutes, the Department is adopting the Recommended Order as its Final Order. A copy of the Recommended Order is attached hereto and incorporated herein. This adoption of the Recommended Order is subject to the Department's obligation under Section 120.57(1)(k), Florida Statutes, to rule on the exceptions filed by the parties, which will be addressed below. Accordingly, the Recommended Order is amended only to the extent required by a ruling on the exceptions.

2. No costs or charges are being assessed against the bonds or cashier's checks submitted by Petitioners for purposes of posting a protest bond. The respective bonds or checks provided shall promptly be returned to Petitioners by the Department following entry of this Final Order.

Wherefore, it is hereby ordered and adjudged that the Department's decision to reject all replies in response to ITN #12-DC-8396 was not illegal, arbitrary, dishonest or fraudulent. The petitions filed by Embarq and GTL challenging the decision to reject all replies to the ITN are dismissed with prejudice. Further, the Petitions filed by GTL and Securus challenging the original award to Embarq need not be considered and are dismissed as moot. Paul Jacquin & Sons, Inc. v. City of Port St. Lucie, 69 So.3d 306, 308 (Fla. 4<sup>th</sup> DCA 2011).

#### **RULINGS ON EXCEPTIONS**

Florida case law holds that parties in formal administrative proceedings must alert reviewing agencies to any perceived defects in recommended orders by filing exceptions. Florida Dept. of Corrections v. Bradley, 510 So.2d 1122, 1124 (Fla. 1<sup>st</sup> DCA 1987); see

Henderson v. Dept. of Health, Board of Nursing, 954 So.2d 77, 81 (Fla. 5th DCA 2007).

However, the agency does not have to rule on exceptions that do not: (1) clearly identify the disputed portions of the Recommended Order by page number or paragraph; (2) identify the legal basis for the exception; or (3) include appropriate and specific citations to the record. Rule 28-106.217(1), F.A.C.; See, §120.57(1)(k), Fla. Stat.

The agency may not reject findings of fact unless the agency first determines from a review of the entire record, and states with particularity, that the findings of fact were not based upon competent, substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law. §120.57(1)(l), Fla. Stat.

Additionally, rejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact. §120.57(1)(l), Fla. Stat. The agency may not reject or modify conclusions of law or interpretations of rules unless the agency has substantive jurisdiction over the laws or rules, states with particularity the reasons for such rejection or modification, and finds that the agency's substitution is as reasonable as that which was rejected or modified. §120.57(1)(l), Fla. Stat.

In light of these requirements, and based upon the complete record submitted to the Department by DOAH, together with the Recommended Order, the exceptions to the Recommended Order and the responses thereto, the Department makes the following rulings on the parties' respective exceptions:

## I. SECURUS'S EXCEPTIONS

(A) Securus's exception (A), is addressed to paragraphs 17, 18, 21, 22, 95, and 97 of the Recommended Order, and is directed towards the dispute it raised over whether Embarq's ITN reply satisfied the call recording requirements of the ITN. It appears from the Recommended Order that the ALJ considered and relied on the exhibits and testimony at the hearing in determining that Embarq's reply to the ITN conformed to this requirement of the ITN. (See Transcript at pp. 135-137 & 223; Exhibits 17 & 30). The ALJ's finding was supported by competent substantial evidence, which supports the conclusions of law that Embarq was responsive and responsible on this point. This exception is denied.

(B) Securus's exception (B) is addressed to paragraphs 26, 27, 95 and 97 of the Recommended Order, and is directed towards the dispute it raised over whether Embarq's ITN reply satisfied the call forwarding requirements of the ITN. It appears from the Recommended Order that the ALJ considered and relied on the exhibits and testimony at the hearing in determining that Embarq's reply to the ITN conformed to this requirement of the ITN. (See Transcript at pp. 133-134; Exhibits 17 & 30). The ALJ's finding was supported by competent substantial evidence, which supports the conclusions of law that Embarq was responsive and responsible on this point. This exception is denied.

(C) Securus's exception (C) is addressed to paragraphs 32, 33, 34, 95, and 97 of the Recommended Order, and is directed towards whether Embarq failed to properly disclose its relationship with Keefe Commissary Network or information about Keefe Commissary Network. It appears that the ALJ considered the facts presented in the record and at hearing on this matter,

and made the determination that Embarq's reply to the ITN conformed to the applicable disclosure requirements. (See Transcript at pp. 127-133 & 226-227; Exhibits 17 & 30; Exhibit 60 at pp. 16-17) The ALJ's finding was supported by competent substantial evidence, which supports the conclusions of law that Embarq was responsive and responsible on this point. This exception is denied.

(D) Securus's exception (D) is addressed to paragraphs 15-18, 26-27, 41, 95 and 97 of the Recommended Order, and concerns issues raised by Securus with respect to whether Embarq owned its platform, and its use of the staff of its parent company, CenturyLink. It appears from the Recommended Order that the ALJ considered and relied on the exhibits and testimony at the hearing in determining Embarq's reply to the ITN conformed to this requirement of the ITN. (See Transcript at pp. 99-100, 125-126, 142-144, 155-157 & 160-161; Exhibits 17 & 30). The ALJ's finding was supported by competent substantial evidence, which supports the conclusions of law that Embarq was responsive and responsible on this point. This exception is denied.

(E) Securus's exception (E) is directed to the conclusions of law at 95, 97 and 100 of the Recommended Order, asserting that Embarq lacks standing to protest in this proceeding because it is not a responsible or responsive vendor to the ITN. The ALJ found that Embarq was a responsive and responsible vendor at paragraphs 95 and 97 of the Recommended Order. The ALJ's findings were supported by competent, substantial evidence derived from the record in this proceeding, as well as the applicable law set out in Section 287.012(24) and 287.012(26), Florida Statutes. Further, the ALJ's interpretation and application of the law concerning standing to bring a protest under Section 120.57(3), Florida Statutes, was clearly articulated at paragraphs

99-100 and appears supported by controlling law. The Department does not have a basis to reject or modify this conclusion of law under the parameters of Section 120.57(1)(l), Florida Statutes, and this exception is denied.

## II. EMBARQ'S EXCEPTIONS

1. Embarq's first exception concerns what appears to be a scrivener's error. Because the error as such is not supported by competent, substantial evidence, this exception is granted. This correction is supported by the deposition testimony of Russell A. Wiley, offered as evidence in this case, and is consistent with the ALJ's apparent intent in writing this paragraph. (Exhibit 60, at pp. 16-17). Accordingly, the last sentence of Paragraph 33 is revised to state as follows: "It was shown that KCN 'cooperated with the federal government in an investigation' that resulted in criminal convictions, and it is concluded that KCN was therefore not itself a subject of an investigation involving any other type of dealings contrary to federal, state, or other regulatory agency regulations." This limited change does not result in the finding of fact at paragraph 33 being rejected, but rather corrects this paragraph to the ALJ's intent.

2. The first part of Embarq's second exception concerns the finding of fact at paragraph 79. Embarq asserts that both it and GTL would be harmed by a re-solicitation of bids, but the finding only pertained to Embarq. However, GTL's Petition challenging the Department's decision to reject all replies to the ITN did not raise this as an issue in its case. Accordingly, the ALJ's decision to limit this finding to Embarq was supported by the pleadings in this case and was appropriate. This exception is denied.

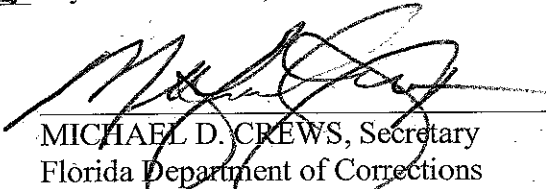


The second part of Embarq's second exception concerns the ALJ's decision not to include a finding on Embarq's claim that an agency must consider the anticompetitive effect of a re-bid prior to making its decision to reject all replies. This issue was litigated by the parties, with the Department's position being that the part of Section 120.57(3)(f), Florida Statutes, concerning a decision to reject all replies to an ITN omits any reference to a "contrary to competition" standard. The ALJ's decision not to render a conclusion of law on this issue is fully supported by the controlling statutory authority, and this part of the second exception is denied.

### III. DEPARTMENT'S EXCEPTIONS

The Department's exceptions concern a misnomer in a finding of fact at paragraph 65 that was repeated in a conclusion of law in paragraph 107. A review of the record reveals that it was the Procurement Manager, and not the Contract Manager, that made the calculation in question. (See Transcript at pp. 226, 461-462 & 479). This part of paragraphs 65 and 107 is not supported by competent substantial evidence. Accordingly, these exceptions are granted. The term "Contract Manager" in paragraphs 65 and 107 is corrected to state "Procurement Manager." This limited change does not result in the finding of fact at paragraph 65 or the conclusion of law at paragraph 107 being rejected.

**DONE and ORDERED** this 25<sup>th</sup> day of November, 2013.

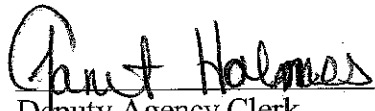
  
MICHAEL D. CREWS, Secretary  
Florida Department of Corrections  
501 South Calhoun Street  
Tallahassee, Florida 32399-2500

Notice of Right to Appeal

This Final Order constitutes final agency action. Any party to this proceeding has the right to seek judicial review of the Final Order pursuant to Section 120.68, Florida Statutes, by filing a Notice of Appeal in accordance with Florida Rules of Appellate Procedure 9.110 and 9.190, with the Clerk of the Department of Corrections in the Office of General Counsel, 501 South Calhoun Street, Tallahassee, Florida 32399; and by filing a copy of the Notice of Appeal accompanied by the applicable filing fees either in the First District Court of Appeal or in such other appellate district as the party appealing resides. The Notice of Appeal must be filed within 30 days from the date this Final Order is filed with the Clerk of the Department.

Filed in the official records of the Florida Department of Corrections on this

26<sup>th</sup> day of November, 2013.

  
Deputy Agency Clerk

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing "Final Order" has been furnished this

26<sup>th</sup> day of November, 2013, by U.S. Mail to:

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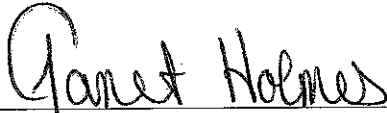
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