

State of Florida



Public Service Commission
CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: May 9, 2014
TO: Carlotta S. Stauffer, Commission Clerk, Office of Commission Clerk
FROM: Pamela H. Page, Senior Attorney, Office of the General Counsel *PHP*
RE: Docket No. 140029-TP - Request for submission of proposals for relay service, beginning in June 2015, for the deaf, hard of hearing, deaf/blind, or speech impaired, and other implementation matters in compliance with the Florida Telecommunications Access System Act of 1991.

Please file this e-mail and its attachment in the above referenced docket file.

Thank you very much.

PHP/ace

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14 MAY - 9 PM 4: 08
COMMISSION
CLERK

Pamela H. Page

From: Marty McDonnell <marty@rutledge-ecenia.com>
Sent: Thursday, May 08, 2014 11:59 AM
To: Pamela H. Page
Subject: Sprint comments
Attachments: FL Draft RFP Sprint comments.docx

Pam,

As we discussed, attached are Sprint's comments.

Thanks,
Marty

Martin P. McDonnell, Esq.
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re:)
)
Request for Submission of Proposals for)
Relay Service, Beginning in June 2015,)
For the Deaf, Hard of Hearing, Deaf/Blind,) Docket No. 140029-TP
or Speech Impaired, and other Implementation)
Matters in Compliance with the)
Florida Telecommunications Access System)
Act of 1991.)

**SPRINT COMMENTS REGARDING
DRAFT REQUEST FOR PROPOSAL**

Comes now Sprint Communications Company L.P. (“Sprint”) and submits these comments regarding the draft Request for Proposal issued in this matter on April 17, 2014. Sprint greatly appreciates Staff’s consideration of these proposed changes. Most of the comments herein follow the order of the draft RFP. One issue stands out to Sprint above the others and is, therefore, addressed first. For clarity, herein, Staff’s proposed changes to the original verbiage are set forth in regular strikethrough and underlined new verbiage. Sprint’s proposed changes are set forth likewise with strikethrough and underlining but are in italics to be easily distinguished.

1. Section B 57 Liquidated Damages

Sprint understands that the Commission has a history of including liquidated damages in its TRS RFPs and that it does this to ensure high quality service. Sprint does not object to having meaningful liquidated damages included but would strongly urge the following changes.

57. Liquidated Damages for Failure to Initiate Services on Time or to Provide Contracted Services for the Life of the Contract

Implementation of the Florida Relay Service in a timely matter is essential. Failure by the provider to implement the service by June 1, ~~2012~~ 2015, shall be considered a significant and material breach of the provider's ~~commitment~~ contract. Subject to Section 36, Force Majeure, ~~f~~For every day the service is delayed, the provider shall pay to the Administrator, for deposit in its operating fund, the sum of \$25,000 per day.

Liquidated damages ~~shall~~ may accrue up to the following amounts per day for each violation. Liquidated damages for any particular month may not exceed the expected monthly revenue from the provision of services provided pursuant to this RFP.

- a. For failure to meet answer time requirements - \$5,000
- b. For failure to meet, blockage rate or transmission level requirement - \$5,000
- c. For failure to meet complaint resolution requirement - \$1,000
- d. For failure to provide timely reports - \$500
- e. For failure to meet minimum typing speed of 60 words per minute on live relay calls according to the below-referenced tiered penalties to be assessed on a monthly basis: - \$5,000

<u>Under 90% - \$5000</u>
<u>>90% - <91% - \$4000</u>
<u>>91% - <92% - \$3000</u>
<u>>92% - <93% - \$2000</u>
<u>>93% - <94% - \$1000</u>
<u>>94% - \$0</u>

~~f. For failure to provide contracted services for the life of the contract, the FPSC reserves the right to require the payment by the provider of liquidated damages in the amount commensurate with the duration and extent of the system deficiencies.~~

Any liquidated may be paid by means of the Administrator deducting the amount of the liquidated damage from a monthly payment to the provider. Such action shall only occur upon order of the FPSC.

Explanation: Sprint hopes Staff will appreciate that even TRS providers offering a reliably high quality product, like Sprint does, need to be able to mitigate their potential losses from, for example, weather and other unexpected events that can temporarily harm service quality. Also,

it is not a secret that TRS services are declining in volume year after year which makes it very important for providers to make sure their service stays “in the black” through the life of a contract. Sprint believes its proposed changes to this section still offer Bidders strong incentives to provide high quality services for Floridians while mitigating the potential open-ended liability in the terms of the draft RFP.

2. Section A 6 Definitions/Acronyms

d. Answer Time – The point in the progression of inbound calls ~~at the relay center when the communications assistant is ready to serve.~~ beginning when it arrives at the call center switch until it is routed to a communications assistant.

e. Billable Minutes – For the purpose of calculating and rendering bills to the Administrator [Section 427.704(2), F.S. Florida Statutes], billable minutes is the elapsed time between the time the incoming call enters the FRS provider’s relay center switch and the completion of relay service. ~~Total session time shall be rounded to the nearest one-tenth of a minute or less per session and the t~~ Time for all call sessions shall be added together for all incoming calls during the month and shall be rounded to the nearest one tenth of a minute or less to produce the total billable minutes per month. The total of billable minutes for the month shall be rounded to the nearest one-tenth of a minute. In a session which includes a mix of intrastate toll or local calls and interstate or international calls, the time associated with the interstate or international calls shall not be included in the billable time for that call session.

f. Blocked calls – Calls ~~reaching the being blocked by the carrier’s 800 number network that do not terminate by ringing a communications assistant position.~~

v. Session Minutes - Session minutes include the entire time that the relay call is connected to the communication assistant, including the time used to set up the call and wrap up the call.

Explanation: These definitional edits are intended to make the definitions more clear and make them reflect the way the service really operates. They are largely self-explanatory but the proposed change to the “Blocked Calls” definition is needed because the current draft definition applies more to “Abandoned Calls” as set forth in the draft definitions which is not the intent.

3. Section A 18 Contract Document

The successful bidder will be required to sign a contract which will include the following elements.

- a. The bidder's Proposal in response to the RFP.
- b. The bidder's Proposal in response to The RFP.
- c. A document identifying any clarifications to the proposal and any unsolicited items contained in the proposal and desired by the FPSC to be included in the FRS.

All of the above items together will constitute a complete initial contract that will be approved by the FPSC's Executive Director on behalf of the FPSC. In the event of the conflict between provisions of the contract document, The following order shall apply: (i) the contract and any amendments to the contract; (ii) the bidder's response to the RFP; (iii) A document identifying any clarifications to the proposal and any unsolicited items contained in the proposal and desired by the FPSC to be included in the FRS; and (iv) the provisions of the RFP.

Explanation: Because the Bidder's proposal clarifies how it complies with the RFP and will contain any clarifications to the State's RFP, Sprint suggests clarifying that the Bidder's proposal supersedes in the order of precedence.

4. Section A 19 Limited Liability

A. To the extent provided for in Section 427.707, Florida Statutes, the FPSC, its Advisory Committee, and the PRC assume no liability with respect to the RFP, proposals, or any matters related thereto unless there is malicious purpose or wanton and willful disregard of human rights, safety, or property in the establishment, participation in or operation of the telecommunications relay service. To the fullest extent permitted by law, all prospective service providers and their assigns or successors by their participation in the RFP process, shall indemnify, save and hold the FPSC and its employees and agents, including the Advisory Committee and PRC, free and harmless from all third party suits, causes of action, debts, rights, judgments, claims, demands, accounts, damages, costs, losses, and reasonable attorney fees and associated expenses of whatsoever kind in law or equity, known and unknown, foreseen and unforeseen, arising directly from ~~or out of~~ the RFP and/or any subsequent acts related to personal injury, death, or damage to tangible personal property that is alleged to have resulted, in whole or in part, from the negligence or willful misconduct of Bidder or its subcontractors, directors, officers, employees, or authorized agents thereto, including, but not limited to, the recommendation of a bidder to the FPSC and any action brought by an unsuccessful bidder. This is a statutory requirement that will not be amended or waived.

Explanation: Modifications to this provision would make the RFP more closely align with standard industry practice. Claims are usually third party in nature and relate to the negligence or wilful misconduct of the bidder/vendor.

B. Additional Limitations of Liability. (1) Direct Damages. For all claims against the Vendor under any contract or purchase order, and regardless of the basis on which the claim is made, the Vendor's liability under a contract or purchase order for direct damages shall be limited to the greater of \$100,000, the dollar amount of the contract or purchase order, or two times the charges rendered by the Vendor under the purchase order.

(2) Consequential Damages. NEITHER PARTY WILL BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, OR INDIRECT DAMAGES FOR ANY CAUSE OF ACTION, WHETHER IN CONTRACT OR TORT. CONSEQUENTIAL, INCIDENTAL, AND INDIRECT DAMAGES INCLUDE, BUT ARE NOT LIMITED TO, LOST PROFITS, LOST REVENUES, AND LOSS OF BUSINESS OPPORTUNITY, WHETHER OR NOT THE OTHER PARTY WAS AWARE OR SHOULD HAVE BEEN AWARE OF THE POSSIBILITY OF THESE DAMAGES.

Explanation: These provisions would allow the Bidder means to limit its overall liability. It has become customary for states to allow vendors, within reason, to limit their liability. Sprint is suggesting herein ways Bidders can limit their overall liability. Many states have allowed, within reason, vendors to limit their liability. This verbiage is similar to language found in the State of Florida – General Contract Provision for Services. (See http://www.myflorida.com/apps/vbs/adoc/F7740_PUR1000.pdf).

5. Section A 21 Cancellation/Availability of Funds

The FPSC shall have the right to unilaterally cancel, terminate, or suspend any ensuing contract, in whole or in part, by giving the provider 60 calendar days written notice by certified mail, return receipt requested, or in person with proof of delivery. If a breach of the contract by the provider occurs, the FPSC will provide written notice to the provider, and allow ~~14~~ 30 days to cure the breach. If a breach of the contract is not cured within the ~~14~~ 30 days, the FPSC may, by written notice to the provider, terminate the contract upon 24 hours notice. The provisions herein do not limit the FPSC's right to remedies at law or to damages.

Pursuant to Rule 25-25.013, F.A.C., on multi-term contracts, this contract is subject to the availability of funds.

Bidder's Right to Terminate. Bidder may suspend or terminate Products or Services or this Agreement immediately if: (1) FPSC fails to cure its default of payment terms of this Agreement within 30 days of notification or (2) FPSC fails to cure any material breach of this Agreement within 30 days after receiving Bidder's written notice of such breach.

Explanation: A thirty day cure period is standard in most other similar agreements Sprint has in other jurisdictions. Inclusion of a Bidder's Right to Terminate, along with FPSC's existing language, permits the RFP to include termination rights for both parties.

6. Section A22 Public Bidder Meetings and Proprietary/Confidential Information

Unless otherwise exempt from disclosure under Chapter 119, Florida Statutes, or Section 24(a) of Article I of the State of Florida Constitution, all documents qualifying as public records shall be made available by the provider to the requestor, for public inspection. The FPSC may unilaterally cancel the Agreement for refusal by the provider to allow such public access. The provider must:

(a) Keep and maintain public records that ordinarily and necessarily would be required by the FPSC in order to perform the service.

(b) Provide the public with access to public records on the same terms and conditions that the FPSC would provide the records and at a cost that does not exceed the cost authorized by law.

(c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.

(d) Meet all requirements for retaining public records and transfer, at no cost, to the FPSC all public records in possession of the provider upon termination of the Agreement and, upon written request, destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the FPSC in a format that is compatible with the information technology systems of the provider.

Explanation: The addition of "upon written request" ensures Vendors have sufficient notice of ongoing obligations post-contract.

7. Section B 51 IP and Video Relay Service

If required by the FCC, the bidder shall be capable of providing Video Relay Service. If required by the FCC, the bidder shall be capable of providing IP-Relay service. If required by the FCC, the bidder shall be capable of providing IP Captioned Telephone Service. If such services are required by the FCC, in order to comply, the parties will amend the Contract to include any new obligations required by either party.

Explanation: If new post-RFP and post-contract obligations are imposed on the provider, it is reasonable to expect that changes to the underlying contract could be required (i.e. new equipment may need to be acquired, etc.)

8. Section B54 Submission of Monthly Invoice

By the 14th calendar day of the month (or the subsequent business day if the 14th falls on a Saturday, Sunday, or holiday), the provider shall submit a detailed invoice (showing billable minutes and rates) to the Administrator [defined in Section 427.703(1)] at the contracted price for the previous month's activity. The accounting period used to prepare monthly invoices shall be the calendar month. Payment shall not exceed the prices contained in the contract. The invoice and supporting documentation shall be prepared in such a way as to allow the Administrator or the FPSC to audit the invoice. A copy of the monthly invoice shall be submitted to the contract manager at the same time it is submitted to the Administrator.

Payment Terms. Vendor will invoice FPSC as requested above, and FPSC will pay Vendor, in United States dollars (USD), unless otherwise mutually agreed in writing by the parties. Payment terms are net 30 days from the date of invoice receipt. Invoices are deemed to have been received within 5 days of the invoice date. If FPSC fails to make such payment within 15 days of receiving Vendor's written notice of nonpayment, Vendor reserves the right to charge a late fee (up to the maximum allowed by law) or take other action to compel payment of past due amounts, including suspension or termination of Service, unless prohibited by an applicable state law or regulation.

Disputed Charges. If FPSC disputes a charge in good faith, FPSC may withhold payment of that charge if FPSC (1) makes timely payment of all undisputed charges; and (2) within 30 days of the due date, provides Vendor with a written explanation of FPSC's reasons for disputing the charge. FPSC must cooperate with Vendor to resolve promptly any disputed charge. If Vendor determines, in good faith, that the disputed charge is valid, Vendor will notify FPSC and, within 5 business days of receiving notice, FPSC must pay the charge or invoke the dispute resolution process in this Agreement. If Vendor determines, in good faith, that the disputed charge is invalid, Vendor will credit FPSC for the invalid charge.

Explanation: Terms such as those suggested herein by Sprint are part of most typical agreements Sprint has with many of its contracts with other states. Moreover, Sprint's suggested verbiage includes terms that are frequently required by customers. In fact, similar language is provided in the State of Florida – General Contract Provision for Services. (See: http://www.myflorida.com/apps/vbs/adoc/F7740_PUR1000.pdf).

9. Additional Miscellaneous Provisions to Consider

WARRANTIES. EXCEPT AS, AND ONLY TO THE EXTENT EXPRESSLY PROVIDED IN THIS AGREEMENT, PRODUCTS AND SERVICES ARE PROVIDED "AS IS." VENDOR DISCLAIMS ALL EXPRESS OR IMPLIED WARRANTIES AND IN PARTICULAR DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND WARRANTIES RELATED TO EQUIPMENT, MATERIAL, SERVICES, OR SOFTWARE.

Assignment. Neither party may assign any rights or obligations under this Agreement without prior written consent of the other party, except that Vendor may assign this Agreement to a parent company, controlled Affiliate, Affiliate under common control or an entity that has purchased all or substantially all of its assets upon written notice to FPSC

Explanation: Sprint offers its telecommunications products and services pursuant to these standard terms and conditions. These standard terms and conditions include important notices regarding use of service and compliance with industry requirements, and help vendors such as Sprint to provide the highest quality telecommunications services at competitive prices for our customers. Sprint requests that the FPSC consider these provisions as part of its RFP.